

UC SOUTHERN REGIONAL LIBRARY FACILITY

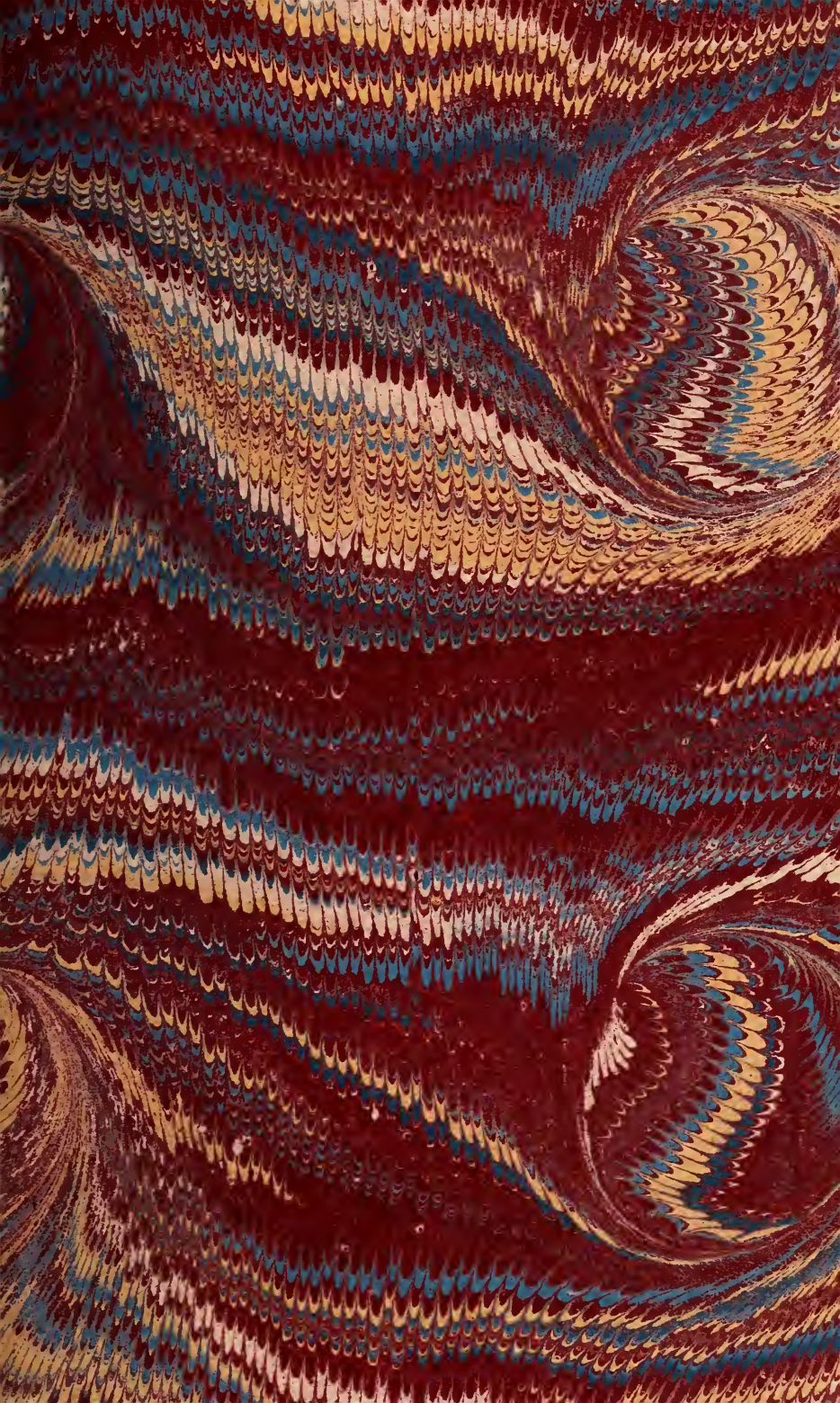


A  
A  
0  
0  
0  
9  
5  
3  
5  
6  
4  
2

ia











JN  
673  
T42  
v. 2

















MEMOIRS  
OF  
THE HOUSE OF COMMONS,  
FROM  
THE CONVENTION PARLIAMENT OF 1688-9  
TO THE  
PASSING OF THE REFORM BILL,  
IN 1832.

BY  
W. CHARLES TOWNSEND, Esq., A.M.,  
*RECORDER OF MACCLESFIELD.*

---

VOLUME II.

---

SECOND EDITION.

LONDON:  
HENRY COLBURN, PUBLISHER,  
GREAT MARLBOROUGH STREET.

---

1844.

LONDON: HARRISON AND CO., PRINTERS,  
ST. MARTIN'S LANE.



## CONTENTS OF THE SECOND VOLUME.

---

### CHAPTER I.

	Page
Memoirs of the leading Lawyers in the House continued—Contrast between the two Tory and Whig Chancellors of the reign of Queen Anne and George I.—Harcourt and Cowper—Proud Lineage of Harcourt: his eloquence in Parliament—Specimens of his oratory against Sir J. Fenwick's attainder—Unscrupulous in election committees—A man without shame, though very able—His farewell to the House—Defence of Dr. Sacheverell—Appointed Lord Keeper—Deficient in legal knowledge—Anecdote of his career in office, and opposition—A trimming statesman—Life of Lord Chancellor Cowper—The 'Will Bigamy' of Swift—Spoke thrice on the day of taking his seat—Equally successful in the Commons and at the bar—An excellent Lord Keeper, calumniated, but learned, courteous, and dignified—Patron of Hughes, Protector of Richard Cromwell, Champion of Atterbury . . . . .	1

### CHAPTER II.

Memoir of another Chancellor of Whig creation, Peter King—When a youth up to the elbows in grocery—Kinsman of Locke, author of a theological work at twenty—Sent to Leyden—Returned to Parliament, with Cowper, for Beer-alston—Dissuaded by Locke from speaking too soon—Extracts from his correspondence with the great philosopher—A frequent speaker—Zealous Whig—Appointed Chief Justice—Anecdote of his humanity—Succeeded Lord Macclesfield as Chancellor—Feeble and inefficient—Attacked by Whiston for his distribution of church patronage—Struck with apoplexy—Memoir of another pupil of the good old Whig school, Sir Joseph Jekyll—Vindicated for his patriotism and odd-fashioned integrity—Sturdily independent in his votes and speeches—Fought *à l'outrance* against duellists and gin-drinkers—An excellent Master of

	Page
the Rolls for twenty-two years—Wrote in defence of his office—Anecdote of his intercourse with Whiston—Bequeathed his fortune towards paying off the national debt—Well for the world were there more such visionaries to be found in it! . . . . .	36

## CHAPTER III.

Sketches of other eminent Lawyers in the House, but whose celebrity in the senate was incommensurate with their reputation at the bar—Chief Justice Holt maintained the independence of his office against both Lords and Commons—Anecdote of his threat to the Speaker apocryphal—Most emphatic on the bench—Heneage Finch, the silver-tongued Solicitor-General, at twenty-nine—Advocate against Lord William Russell and Sydney—Exchanged sharp words with Jeffries—Returned to the Convention for Oxford, and well baited there—Reduced from the weight of obloquy to the condition of a mute—Created by Queen Anne a baron; by George I. an earl—Sketch of his contemporaries, Pollexfen, Sir George Treby, Sir John Trenchard, and Sir John Hawles—Miserable speaker—Admirable pamphleteer—Of Serjeant Pengelly, made the subject of Steele's quips and gibes—Of Roger North, the biographer, and Sir Robert Raymond—His valiant stand in Parliament against the statutes being in English—Superstition of lawyers for antiquity . . . . .	66
--	----

## CHAPTER IV.

The vindictive privileges of the House reviewed and illustrated—First over their own Members—Punishments for contempt—Instances of naming by the Speaker—Reprimand from the chair—Further punishment—Committals to the custody of the Serjeant, and to the Tower—Examples—The sentences of the Long Parliament disgraced by grievous partiality—Instances of infliction of penalty after the Revolution—Members sometimes, but rarely, suspended from attending—The more favourite remedy, their extreme act of senatorial power, the sentence of expulsion—Its necessity asserted—To be exercised with peculiar caution—The principle well explained in the discussion on the expulsion of Wilkes—First precedent in the reign of

	Page
Henry VII.—Expulsion of Mr. Norton considered—Of Sir Charles Piggott and Mr. Shepherd—Puritan rigour abused the privilege most capriciously—Expulsions vigorously plied by the despotic majorities of the Long Parliament—Examples—Propriety of expulsions by the Pensioner Parliament considered—After the Revolution, of Sir Henry Monson, Mr. Cholmondely—Mr. Archdale—Sir Richard Sawyer, Sir J. Trevor—Mr. Hungerford—Anecdotes of that clever lawyer, and others punished for corruption—Of Henry Grey, Duncombe, Shepherd, Lord Ranelagh—Of members unjustly expelled—Ridge and Cardonnell—Walpole—Justice of the stroke of vengeance in his case considered	88

## CHAPTER V.

Members expelled for religious and political libels—Mr. Asgill's strange history and character—Sir Richard Steele sacrificed to the spleen of faction—Account of his expulsion for the publication of an alleged libellous pamphlet—The Crisis—Gallantry of Lord Finch—Majority of expulsions in the reign of George I. necessary—Of Pryce—Of Foster—The South Sea Directors—Of Aislabie, Chancellor of the Exchequer—Of the Directors of the Charitable Corporation—More questionable of Mr. Vernon—Undoubted necessity for expelling Mr. Ward—Anecdotes of that miscreant—Increased moderation under George II.—Fewer expulsions during the sixty years of George III. than in two years of George I.—The few instances inevitable—Colonel Cawthorne—Benjamin Walsh—Lord Cochrane—Kneeling at the bar, once insisted on, disobeyed by Jenkins, the Welsh Judge—Alexander Murray peremptorily refused to kneel—His sufferings in consequence—By his firmness the odious ceremony abolished—As obsolete and barbarous, as the Chinese <i>kotou</i>	127
--	-----

## CHAPTER VI.

The Convention 'used their spiriting gently'—Instances—Contrasted with the Long Parliament and its wild excesses of tyranny—Vindictive privileges of the House over strangers considered—Their right of commitment for contempt unquestionable—Of witnesses—Returning officers and all
--

	Page
concerned in the election of Members—Of petitioners— Their mode of dealing with election petitions capricious and unjust—Examples—Rigour of their conduct to petitioners in general—The abhorrrers—Kentish petitioners in 1701—Hardships of Mr. Colepepper—Right to petition not conceded by their representatives to the people till the middle of the 18th century—Harsh and hasty in their punishments for slander or libels on Members—Morbidly sensitive to reports and all aspersions on their dignity— Regardless of the lessons taught by history and phi- losophy . . . . .	155

## CHAPTER VII.

The vindictive privileges necessarily unpopular that were founded on usurpation—Libels on Religion or the State punished by the House at pleasure as constructive libels on themselves—Specimens of the pestilent books burnt by order of the House—Notice of several libels committed to the flames by their order—Bishop Burnet's pamphlet, "King William and Queen Mary Conquerors"—De Foe's "Shortest Way with Dissenters"—Tutchin's "Observer" —Rev. R. Steevens' "Memorial of the Church of England"—Dr. Binckes' 30th of January "Sermon"— Dr. Coward's "Second Thoughts"—The Bishop of St. Asaph's "Preface to Four Sermons"—The House drew all into their drag-net by constructive contempt, votes of censure, and criminatory resolutions—Addresses for pro- secutions by Attorney-General—Offenders included often not amenable to the jurisdiction of Parliament—Prosecu- tions directed by the House abortive to a proverb—Ex- amples—Extraordinary penal legislation—Acts of Attain- der condemned, from the first precedent of Cromwell Earl of Essex to the attainder of Sir John Fenwicke—Debate on his condemnation—Gallant stand made by the Tories —Bills of Pains and Penalties equally unjust—That for prolonging the imprisonment of Major Bernardi forty years without trial denounced—Not less flagrant the banishment inflicted by an <i>ex post facto</i> law on the plotting Dr. Atterbury—Summary acts of penal justice too great and dangerous a power for man to exercise over man	185
---	-----



## CHAPTER VIII.

Impeachment for some centuries the favourite instrument of the Commons' vengeance, their longest weapon and sharpest—History of impeachments before the Revolution summarily told—Several abortive impeachments immediately subsequent to the Revolution glanced at—The first seriously followed up against the Duke of Leeds for corruption—Full account of that extraordinary investigation, illustrating the manners and morals of statesmen of the reign of William III.—Biography of that thrice impeached Peer—The cashierer of the Pensioner Parliament—Early career of Lord Danby—A daring but unscrupulous Treasurer impeached for consenting to the king's bartering for bribes from France—Imprisoned five years—His lofty remonstrance—Released by the courage of Jeffries—The old Cavalier malcontent under James and William—A grumbling member of the Cabinet—Dissatisfied even with his Dukedom—Unpopular, terse, and epigrammatic in speech—The most able of the courtiers of Charles II. 208

## CHAPTER IX.

The next impeachment of the Commons, a degradation—The hunting down a Lustring Company—Disputes between the two Houses on points of ceremonial respecting the trial—The loftier flight of the Commons in their next assault, that of Lord Chancellor Somers—His impeachment taught a great constitutional lesson, the responsibility of Ministers of the Crown—Futile in its immediate consequences and disgraced by faction—A still more important national question discussed on the impeachment of Dr. Henry Sacheverell—The subject's duty of passive obedience—The Crown's hereditary right tried in this feigned issue—Complete analysis of this important trial—Of the articles and speeches of the managers—Palm of eloquence awarded to Serjeant Parker—Able defence of Harcourt and Phipps—Dramatic power of the Doctor himself—Arrayed in personal advantages—Specimen of his pathetic peroration—Its effect—Rejoinder of the indignant managers—The sentence a mockery of punishment—Memoir of this lucky

	Page
pseudo-martyr—His protracted trial one long festive ovation—His triumphant tour in the nature of a royal progress—Subsided into comparative obscurity—Used as a torch, then cast aside like a piece of blackened wood	242

## CHAPTER X.

Impeachment of the Jacobite rebels in 1715, who had acted on Sacheverell's principles—Of the Earl of Derwentwater—Earl of Wintoun—Curious trial of this half-witted Peer—Cruelty of the law illustrated which did not then allow prisoners accused of High Treason a full defence by counsel—Humanity of the Lord High Steward, Lord Cowper—Escape of Lord Wintoun to France—Impeachment of a brother Earl, more shrewd and fortunate, the Earl of Oxford—His eloquent defence—His peace of Utrecht ignominious, but not treasonable—Anecdotes of the intrigues that led to his acquittal	286
---	-----

## CHAPTER XI.

Impeachment of Lord Chancellor Macclesfield for corrupt practices—Amusing but degrading interviews between the Masters in Chancery and the Chancellor's private Secretary—Douceurs freely asked and freely given, say £2,000, sometimes 3, or £5000—Defence of the Chancellor rather in extenuation than denial—Unanimously convicted—Justice of his condemnation and sentence questioned by Bishop Pierce—Memoir of the unfortunate Earl—Parliament breathed awhile—In 1746 impeached Lord Lovat of High Treason—The Speaker went up for the last time in the annals of Parliament, to demand judgment against that double traitor—Subsequent fruitless impeachments glanced at—That of Warren Hastings—The first which ended in an absolute acquittal—His acquittal just—Also that of Lord Melville, an excellent Public Minister—The power of impeaching in abeyance, like the royal veto, or privilege of refusing the Supplies	318
---	-----

## CHAPTER XII.

Internal economy of the House reviewed—Number of Members formerly in constant fluctuation—Their attendance irregular, but strictly enforced—Excuse for absence during
---

the winter season, in the difficulty of travelling and badness of roads—Necessity of constant attendance enforced—Many important measures carried by slender majorities, or the Speaker's casting vote—Instances—Length of Session greatly increased, also length of sittings—Speakers far more numerous and prolix than of old—Examples—Amount of business quadrupled—Vast increase and evil of post-midnight legislation—Progressive increase of late hours—Former and more regular times of the House meeting and rising contrasted—Late hours, deprecated by Burnet and Speaker Onslow, attained their climax in the reign of George III.—Present custom of adjourning at twelve o'clock at night most consonant with the requisites of business and habits of society . . . 357

## CHAPTER XIII.

Multiplication of orators checked by fear of failure and modern fastidiousness—Instances, Mr. Ward and Gibbon—Also by two useful Statutes, that of William III., annulling the elections of all under twenty-one years of age, and that of Queen Anne requiring a qualification in land from all Members, excepting a few classes—The House formerly crowded with minors—Quaint remonstrance of Recorder Martin against the growing evil at its zenith in the reign of Charles II.—Senators of fourteen—Prynne's pamphlet—Indignant at being thrust aside to make way for grandchildren—Persons of quality smuggled into the House after the Statute before the statutable age—Examples in Lord Chesterfield and Fox—The great orators, with the exception of Burke, all entered Parliament young—Happy results to oratory from the blending together of young speakers with the Fathers of the House—The limits set upon age more felicitous than those of ancient or continental senates—The Statute of Anne an excellent corrective against the influx of too many young and handsome adventurers—Importance of a wealthy aristocracy in Parliament—Undue importance attached by our ancestors to the possession of large landed property—Examples—Contempt for mere delegates illustrated in the composition of the States General—Paradox of Soame Jenyns—Disappointment of a stranger at the carelessness of Members' dress and demeanour—Anecdotes of former strictness—

	Page
Wearing of swords—Periwigs—Full dress—Propriety of Senators wearing robes advocated at the Revolution—Attention of Lord Chatham to costume—Former gay appearance of St. Stephen's Chapel—Effect of the levelling principle in dress . . . . .	390

## CHAPTER XIV.

Contrast between the present and former manners—Traits of indecorum in primitive times—Interruptions by spitting and hissing, humming—Modern signs of impatience—Long intervals of silence formerly—Rank and degrees of members formerly more marked and regarded—Distinction as to seats—Rules for exact discipline rigidly laid down by the Long and Pensioner Parliaments—The Lax practice—Balance in favour of modern decorum not very great—Manners of old Parliaments softened by distance of time and paucity of reporters—History of reporting—Sir Symonds D'Ewes—Townsend—Sir Benjamin Rudyard—Burton—Anchitell Grey—Somers' pencil notes—Singular debate in reprobation of reporting introduced by Speaker Onslow's complaint—Denounced by Walpole and Pulteney, advocated by Wyndham—Subsequent reports with asterisks and Roman names—Dr. Johnson's speeches—Triumph of the printers in 1771—Subsequent impertinence and present power—The Reporters' gallery, a fourth estate of the realm—History and anecdotes of admission to the Strangers' gallery—Effect of old St. Stephen's Chapel on a stranger—The <i>genius Loci</i> . . . . .	424
--	-----



# MEMOIRS

OF

## THE HOUSE OF COMMONS.

---

### CHAPTER I.

IN the long gallery of Parliamentary Portraits, in that department at least appropriate to the eminent lawyers of the House, there are none of greater interest than the two chancellors, who illustrated the reigns of Queen Anne and George I, with their eloquence—Harcourt, and Cowper. Descended alike from ancestors of rare antiquity, rivals in Westminster Hall, antagonists in St. Stephen's Chapel, the leading champions of their party, still more renowned in the senate than the forum, and elevated by their oratory to the height of legal ambition, they might be compared together after the manner of Plutarch, though their political character affords rather a subject of marked contrast than comparison. Unscrupulous as a public man, unprincipled, unstable, at the suggestion of self-interest versatile, a renegade on calculation, Lord Harcourt has left a name, which it required a century of merit in his descendants to redeem from ignominy. The mild, disinterested, course of Cowper, beaming with public virtue to the close, and never shadowed

over with even a fleeting suspicion that he acted from motives of sordid ambition or pelf, has shed a lustre on his name, which adds an adventitious grace to the spotless reputation of the pure-minded poet, the author of the "Task."

Few names have adorned the English peerage, which could boast their descent from a nobler source, or from more remote antiquity, than that of Harcourt, claiming kindred with one of the proudest houses that graced the aristocracy of France during the middle ages.<sup>a</sup> Bernard, a Danish chief of the blood-royal of Saxony, was rewarded for his services to Rollo the Norman, with several fiefs, and among them that of Harcourt. A descendant, on the general adoption of surnames by the Norman nobles, assumed the name of his territory. From his second son, who attended William in his invasion of England, Robert de Harcourt, the lineal ancestor of the Counts and Dukes of Harcourt in the peerage of France, is traced in a direct line, without a single interruption to the male succession, the tory chancellor of Queen Anne.<sup>b</sup> The manor-house of Stanton, in Oxfordshire, selected as the family dwelling in the reign of Richard I., was thenceforward distinguished by the name of Stanton Harcourt, and has, to the present time, a period of more than 600 years, remained the roof-tree of the race! Sir Simon Harcourt, its representative during the rebellion, a brave soldier and a determined royalist, was killed in battle. His son Philip swerved from this ancestral loyalty, espoused presbyterian doctrines, and preferred a private life at Stanton Harcourt, where an only child, Simon, was born in the year

<sup>a</sup> Law Magazine, Art. Harcourt.

<sup>b</sup> Collins's Peerage, by Brydges.

1660. Entered as gentleman commoner at Pembroke College, Oxford, he quitted the university without a degree, after residing two or three years. It was probably during his residence at Oxford, the chosen head-quarters of monarchical and anti-schismatic zeal in those days, that he imbibed the strong disposition towards ultra loyal and high-church ascendancy doctrines, which he afterwards professed so staunchly, and which he certainly could not have derived from the example or instructions of his father, who, educated under the guardianship of Sir William Waller, maintained through life a strict adherence to presbyterianism, and was distinguished as a liberal protector and patron of the ejected non-conformist clergy. It may be conjectured that Sir Philip's apprehensions, lest the bias to toryism should be confirmed by a longer residence at the university, were the occasion of his son's early removal. Admitted on the books of the Inner Temple, after seven years companionship, to judge from the intimacies of his after life, with the wits of Will's coffee-house, and the poets of the Half-Moon, and a very slight initiation into the mysteries of the year-books; he was called to the bar in 1683, the year which the execrable Jeffries rendered notorious in legal annals, by the judicial murder of Sydney.

In 1690, on the assembling of the second parliament of William and Mary, Mr. Harcourt was returned on the tory interest for Abingdon, of which borough he had already been elected recorder, and for which he continued to sit during the following parliaments of that reign and the first of Queen Anne. He was one of the small minority of Commons, who declined to sign voluntarily the association for the king's defence, entered into by both Houses, on the discovery of

the assassination plot in 1696. The bill of attainder against Sir John Fenwick, in the same year, furnished his party with an opportunity of standing forth as the champions of justice, and forced the whigs into the despotic argument, so ill according with all their recent professions, of a state necessity, superseding the common and constitutional forms of law. Among the ablest impugnors of this doctrine, the application of which was undoubtedly not demanded by the exigency of the particular case, Harcourt stands conspicuous. Of his brave reply to the Solicitor-General Hawles, (on the committal of the bill), a portion has been preserved by Ralph,<sup>c</sup> and deserves quotation for its simple and concise force.

“ I know no trial for treason but what is confirmed by Magna Charta ‘*per judicium parium*,’ by a jury which is every Englishman’s birthright, and is always esteemed one of our darling privileges, or ‘*per legem terræ*,’ which includes impeachments in parliament. But, if it be a trial, it is a pretty strange one, where the person that stands upon his trial has a chance to be hanged, but none to be saved. I cannot tell under what character to consider ourselves, whether we are judges or jurymen. I never heard of a judge, I am sure I never heard of a jurymen, but he was always on his oath; I never yet heard of a judge but had power to examine witnesses upon oath, to come to a clear sight and knowledge of the fact. I never heard of a judge, but if a prisoner came before him, the prisoner was told he stood upon his deliverance; and he had not only a power to condemn the guilty, but to save the innocent. Have we that power? You cannot dispose of him otherwise than send him back

<sup>c</sup> Ralph’s History of England.



to Newgate, though you were satisfied of his innocence ; but, in such a case, the party must undergo a double trial, which is contrary to all the rules I ever heard of. If I am a judge in the case, I beg leave to tell you, for my own justification only, what definition I have met with of a judge's discretion. My Lord Chief Justice Coke says it is '*discernere per legem,*' and by that discretion, I take leave to consider this case. If judges make law their rule, they can never err ; but if the uncertain, arbitrary, dictates of their own fancy, which my Lord Coke calls the crooked cord of discretion, be the rules they go by, endless errors must be the effect of such judgments."

In the session of 1700, when the tories had gained a complete ascendant in the Commons, Harcourt was selected to impeach Lord Somers at the bar of the House of Peers, carried up the articles of impeachment, conducted the several conferences between the two Houses, which arose out of their differences as to the form and conduct of the trials, and sat as Chairman of the Committee appointed to direct the proceedings. The new parliament, which met in January, 1701-2, had scarcely made any progress in business, when the king's death struck down the reviving strength of the whigs, and threw power and profit into the hands of their exulting antagonists. Harcourt, who had earned by active services to his party, some of the perquisites at their disposal, was gratified by the removal of Sir John Hawles from the solicitor-generalship to make way for his advancement. He was sworn into office 1st June, 1702, and knighted the same day in company with Northey, the Attorney-General, who, pliant enough to serve either party, escaped dismissal.

The tide had turned against the whigs in the country as well as at court, and the elections to the new parliament produced a triumphant majority of supporters to the tory ministry. The controverted returns also were determined with the most flagrant corruption and injustice in favour of their adherents. In one of these cases Mr. How, a factious and virulent partizan, was voted by a great majority duly elected for Gloucestershire, contrary to the legal forms of enquiry into election petitions, and at variance with the numbers on the poll. This party-triumph was achieved on the motion, and by the instrumentality, of the Solicitor-General, and exposed him to no little scandal. "He was often," (Speaker Onslow informs us<sup>d</sup>) "reproached with it to his face; but," adds the same authority, with a severity justified by a review of Lord Harcourt's political career, "he was a man without shame, though very able." Burnet pays the same compliment to his intellect at the expense of his integrity. "Harcourt had no character in any station, save for his abilities. He had the greatest skill and power of speech of any man I ever knew in a public assembly." It is pleasant to see him requited for his misconduct in this transaction in the self-same coin. Having intrigued with Harley for the overthrow of ministers, and being detected and baffled in his schemes in 1708, Harcourt quitted the office of attorney-general with a formality, of which there is no other recorded precedent, by a surrender of his patent by deed enrolled in Chancery, designed, it would appear, to attest the voluntary nature of the sacrifice.

Misfortunes now crowded on the ex-official. In the parliament, which assembled in November, 1708,

he was again returned for Abingdon, but on a petition lodged against his return by the government candidate, he was unseated, after two days' long and angry debate, in a very full House, by a determination as illegal, and corrupt as that, of which he himself had been the author six years before. He bade farewell to the House in a short speech, of great spirit and severity, the only portion of the debate that has been preserved.<sup>e</sup> "Whatever the determination of this House may be, this I am sure of, and it must be admitted, that I am duly elected for the borough of Abingdon, as ever any man was. Had it been the pleasure of the House to have construed the charter, under which this election is made, according to the natural, and plain words of it, as the inhabitants have always understood it—in such a sense as all former parliaments have frequently expounded it—had you determined the right of election to be in those persons, who have, without any interruption, exercised it for 150 years, you could not have insisted that I had not the majority! Even as you have determined the right, my majority is still unquestionable. No gentleman, with reason, can disprove my assertion, whatever reason he may have to refuse me his vote. You have been truly informed, the petitioner, on closing the poll, declared he did not come there with any prospect of success. But any opposition may give a handle to a petition, no matter for the justice of it, power will maintain it. Whoever sent him on such an errand, what mean and contemptible notions must he entertain of the then ensuing parliament! he must suppose them capable of the basest actions; of being awed and influenced by menaces, or promises, of

<sup>e</sup> Parliamentary History, vol. vi.

prostituting their consciences at the word of command. Had there been such a parliament elected, and I declared not duly elected, I should then have left my place with a feeling of compassion for the unfortunate friends that stayed behind me. Whoever could have framed such a project for himself, must undoubtedly have wished for, perhaps have wanted, such a parliament! He must have been a person, the most abandoned wretch in the world, who had long quitted all notions of right and wrong, all sense of truth and justice, of honour and conscience. Whatever his dark purposes were, it is our happiness, and the nation's, that they were entirely disappointed in the choice of this parliament. I cannot directly point him out, but whoever he was, he may feel, and be truly sensible, of the impartial justice and honour of a British Parliament."

Having glanced, with these severe invectives, against the Earl of Wharton, and with bitter irony on his judges, he summed up the poll on both sides, and demonstrated that the counsel for the petition had left him the majority of two votes, and had added several unquestionable votes to his own poll.

But his unjust judges were resolved to unseat him *per fas et nefas*, and he made his bow.

On the impeachment of Dr. Sacheverell, in 1709-10, Sir Simon Harcourt, in his character of leading tory lawyer, was selected for the chief conduct of the defence. His services, however, were necessarily withdrawn before the end of the trial; just as he concluded his opening speech for the impeached divine, he had notice of his return to parliament for Cardigan; it was said, indeed, by some, that he knew it before he began. He pleaded with a zeal and



acrimony, sharpened by resentment, at his recent extrusion from the House of Commons. His speech was rather that of a rhetorician than an advocate, but it deserves the praise of having made the best of an indifferent case.

The doctor himself evinced the high value he set upon his counsels and exertions, by presenting him with a massive gilt bason (for washing the hands after dinner), modelled in the form of an altar, and with a complimentary Latin inscription, engraved on the inside. He soon earned a still better title to the doctor's gratitude, by soliciting (ineffectually indeed) a bishopric, in his favour, from the Queen. The defence, delivered by Sacheverell himself, is said to have been the joint composition of Dr. Atterbury, Smalridge, and Friend, revised by Harcourt and Sir Constantine Phipps.

These ill-advised proceedings gave the *coup-de-grace* to Godolphin's ministry, and in a few months, contrary to the wishes of Harley, who proposed that he should resume his former office, Harcourt manœuvred himself to the woolsack.

On the meeting of Parliament, in November, the new Lord Keeper had the misfortune unwittingly to offend against the ceremonial of the peerage, and to incur the solemn reproof of the old Earl of Rochester, (the Queen's maternal uncle,) for having presumed, not being himself a peer by patent, to introduce the Scotch Representative Peers to the Queen's presence. Lord Cowper good-naturedly came to his assistance, and maintaining that he had a right, as Lord Keeper, to act in the manner he had done, no further notice was taken of the supposed breach of etiquette.



The only occasion on which his oratory appears to have been called into exercise during the session, was that of presenting the thanks of the House to Lord Peterborough for his successes in Spain ; in the course of which he took occasion to throw out an ungenerous taunt against the Duke of Marlborough. " The present I am now offering to your lordship, is the more acceptable, as it comes pure and unmixed, and is unattended with any other reward, which your lordship might justly think would be an alloy to it."

Disunion soon followed the honeymoon of ministers. It was indeed little likely that there should be any cordial intimacy between the suspicious, dissembling, procrastinating coldness of Harley, and the brilliant, fiery, ambition of St. John. Although the necessities of public business compelled the premier to admit the secretary of state to as much confidence as their uncongenial spirits would endure, this disclosure of state secrets was never made to Harcourt, whose unseasonable determination to possess himself of the great seal had never been forgotten, and was one of those political sins which cannot be forgiven. Even after his appointment as chancellor, he complained, in bitter terms, to Lord Lansdowne, that he knew no more of the measures of the court than his footman ! that Lord Bolingbroke had not made him a visit of a year, and Lord Oxford did not so much as know him, so close was the cordial union of that few, ' those happy few, that band of brothers !'

On the elevation of Harley to the peerage, it was generally expected that the lord keeper would be his companion in dignity, and a lively *jeu d'esprit* of Swift is extant, addressed to St. John, in which, being

convinced, as he informs him by certain ominous prognostics, that his life is too short to permit him the honour of ever dining another Saturday with Sir Simon Harcourt, knight, and Robert Harley, esquire, he begs to be allowed to take his last farewell of those gentlemen on the following day. The expected coronet was, however, withheld a little while longer from his grasp. Harley was ennobled alone, and at the same time received the coveted staff of lord treasurer. St. John wrote to Swift,<sup>g</sup> "The great attorney, who made you the sham offer of the Yorkshire living, had a long conference with the Dragon," (the nickname thought to be expressive of the dissembling character of the treasurer; Bolingbroke's common appellation, *Mercurialis*, was no less applicable to him,) "on Thursday, kissed him at parting, and cursed him at heart. He went to the country yesterday, from whence some conclude that nothing will be done soon."

Though far less intimate with "the great attorney" than with either the treasurer or secretary, Dean Swift was too good a courtier to neglect the dispenser of the crown livings, and has kept a lively record of his jests and visits.—"<sup>h</sup> I made a good pun on Saturday to my Lord Keeper; after dinner we had coarse d'oiley napkins, fringed at each end, upon the table to drink with; my Lord Keeper spread one of these between him and Mr. Prior: I told him I was glad to see there was such a fringeship (friendship) between them. Prior swore it was the worst pun he had ever heard!" And again, "August 12, 1711: I was this morning to visit my Lord Keeper, who made me reproaches that I had never visited him at Windsor. He had a present sent him of delicious peaches, and he was champing and champing, but I could not eat one."

<sup>g</sup> Swift's Works by Scott.

<sup>h</sup> Swift's Journal.

It might have been dangerous to abstract a juicy peach from the dainty patron, who had solicited a bishopric for Sacheverell, and obtained the mitre for Atterbury.

As Chancellor, Lord Harcourt appears to have been not entirely unconscious of his deficiency of legal knowledge. We find him, on several occasions, seeking support in the judgment of the Master of the Rolls, Sir John Trevor. “<sup>i</sup>In one case, for instance, having expressed an opinion, that certain process issued against a wife, during her husband’s absence abroad, was irregular, but being met by an observation from counsel which staggered him, my Lord Keeper said he would ask the Master of the Rolls his opinion, and be governed by that. Afterwards the Master of the Rolls coming into Court, was clearly of opinion that the process was regular, and said the practice of the Court had been constantly so, and so accordingly the case was determined.<sup>k</sup> In another matter, on which the Master of the Rolls had already adjudicated, “my Lord Keeper coming into Court, and being asked his opinion, said he was of the same opinion, to prevent a re-hearing before himself.”

He was much more conversant with literature than law. Pope’s epitaph, inscribed upon his son’s monument at Stanton Harcourt, is known to every reader of poetry. It received several corrections at the hands of Lord Harcourt, who appears to have been but indifferently satisfied with it, when first submitted to his criticism. For instance the sixth line

“Since Pope can tell what Harcourt cannot speak,”  
stood originally—

“Harcourt stands dumb, and Pope is forced to speak,”

<sup>i</sup> Law Magazine.

Parke’s History of the Court of Chancery.

until recast by his lordship's desire, his ear being especially displeased with the not very euphonious participle 'forced.'

Sir Robert Walpole may have rated public virtue at too cheap an estimate, when he affirmed that every man had his price, but possessed a keen faculty of discovering those who had, and thought he perceived some symptoms, which indicated Lord Harcourt's opposition not inexorably proof against the persuasions he had it in his power to apply. He was not mistaken. On the 14th July 1721, his lordship, advanced to the dignity of a viscount, with a pension swelled from two to four thousand a-year, transferred himself without difficulty from the opposition to the ministerial bench, and was heard in ready defence of the self-same measures, which he had denounced not long before, as destructive of his country's liberties. His sordid defection was shortly followed by the proceedings against Atterbury, not less objectionable in their character and tendency, and even more destitute of foundation in legal proof, than those which Harcourt had himself deprecated, with such zeal and force, in the case of Sir John Fenwick. Here, however, we find him recording his practical denial of the principles for which he then contended against the intimate associate of his former life, whose bishoprick had been conferred at his own solicitation, in reward of those very principles and opinions, which he at least could only accuse the Jacobite prelate of having persevered in more consistently, and honourably than himself. We feel the humiliation of dwelling longer upon this period of his political apostacy, and elevated disgrace.

At the old mansion-house of Stanton Harcourt,



which had remained unoccupied by the family since Sir Philip's death, in 1668, but of which a few rooms continued habitable, Pope fixed his retreat during the summers of 1718 and 1719, and there translated the latter volumes of his *Iliad*. Gay was at the same time domiciled at Lord Harcourt's neighbouring house at Cockthorpe, and they were almost the only visitors admitted to interrupt the poet in his laborious seclusion. It would have been well for the memory of the ex-chancellor, if he had retired at the same time from public life.

On Sunday the 23rd of July, 1727, when proceeding in his coach to visit Sir Robert Walpole at Chelsea, Lord Harcourt was seized with a paralytic fit, and although he recovered so far as to regain the power of speech, and was even considered by the physicians to be out of immediate danger, he survived only until the following Friday, when he expired at his house in Cavendish Square, in his 67th year. His remains were conveyed to the vault of his ancestors at Stanton Harcourt, where a long mural inscription records the Viscount's merits. Even the exaggeration of an epitaph could not transcend the praise due to his abilities: the public virtues of the trimming statesman may be most safely consigned to the superlatives of a dead language, and the licensed adulation of the tomb.

The ancient and wealthy family of Cowper, settled for many generations in the county of Hertford, is traced in a lineal ascent to the middle of the fifteenth century. William Cowper was created a Baronet by Charles I., and suffered imprisonment in the royal cause. His grandson stood forward among the most active partizans of the Exclusionists, and was one of the party who, under the headstrong guidance of



Shaftesbury, presented to the grand jury of Middlesex, in June 1680, during the epidemic of the Popish Plot, articles for the indictment of the Duke of York as a Popish recusant. The future chancellor was the eldest son of this stout-hearted old baronet, and born at his father's castle in Hertford, in 1665 or 6. He is charged with having, when very young, deceived a Miss Elizabeth Culling, by means of an informal marriage, an imputation, which, though never proved, the bitter Swift revived against him in the day of prosperity, and taunted the then chancellor with the undignified name of Will. Bigamy. He was called to the bar in the year of the revolution. The influence of his high whig connection, seconded by his own promise of ability, introduced the utter barrister forthwith to the favourable notice of the dispensers of preferment. As early as the year 1693, when he could not have exceeded 25, and had scarcely attained five years' standing at the bar, he had been appointed Solicitor-General to the Queen, and enrolled in the list of King's counsel—a distinction so highly prized, that, at no period during the reign of William or Anne, was it enjoyed by more than eight members of the bar at the same time.<sup>1</sup>

In the parliament which met in November 1695, he was returned jointly with his father for the town of Hertford, and proved that he had acquired one quality essential to success, even more in parliament, if possible, than at the bar—a very sufficient confidence in his own powers. The very day of taking his seat, he found occasion three several times, to address the House, and, speaking with much applause, gave promise of the distinguished parliamentary reputation he subsequently attained. Hunt, the Preston dema-

<sup>1</sup> Law Magazine.

gogue, is the only instance we recollect of similar daring.<sup>m</sup> This character of hardihood, Cowper gallantly sustained in supporting the questionable proceedings instituted against Sir John Fenwick. The bill of attainder was avowedly resorted to for the purpose of supplying the place of a trial before the ordinary tribunals, in which, from the absence of the necessary proof by two witnesses, a legal conviction could not have been obtained, the bench not being polluted as upon the trials of Russell and Sidney. Cowper, who inherited all his father's attachment to whig principles, and whose personal prospects and interests pointed to the same path as his political predilections, appeared among the most active and influential supporters of the bill. An important preliminary question, debated in the first instance, was, whether the preamble, which stated only that Sir John had been indicted for high treason on the oaths of two witnesses, one of whom had since absconded, and had obtained from time to time a postponement of his trial, under the pretext of making a full disclosure of the conspiracy, contained any sufficient allegation, upon which the House might proceed to hear evidence, tending to prove him actually guilty of high treason. Upon this, as upon the more interesting question involved in the whole proceeding, how far the defect of legal evidence could, or ought to be, supplied by the extraordinary application of a parliamentary attainder, we find Cowper ably and sophistically combating the objections urged against that unrighteous ordinance, which the government succeeded in forcing through both Houses.

<sup>m</sup> We refer to Barrow's *Mirror of Parliament* for 1830, to prove his audacity in speaking upon six different questions the very first night.

The liberal opinions of the ardent and free-spoken young lawyer seem to have been often unpalatable to the landed interest. "Mr. Cowper," says Vernon,<sup>n</sup> "has provoked the country gentlemen by saying, that an active, industrious man, who employed £5,000 in trade, was every whit as fit to be a Member there as a country gentleman of £200 a-year, who spent all his time in hawking and hunting, and was over head and ears in debt. My Lord Norreys answered that he was one of those country gentlemen, but thought himself as fit to sit there, as those, who were used to take money for their opinion!"

Successful in the Commons, he was not less eminent at the Bar. He appears to have been retained in all the crown prosecutions of any importance, in which the reign of King William abounded. Of these, the most considerable were the trials of Lords Warwick and Mohun for the murder of Mr. Coote, in 1699, in the latter of which Mr. Cowper was paid a rather unusual compliment, at the expense of the solicitor-general, Sir John Hawles. Mr. Solicitor had summed up the evidence on Lord Warwick's trial the day before, in so mumbling<sup>o</sup> and inaudible a tone of voice as to occasion considerable annoyance to the Peers, and interruption to the proceedings. When he rose to perform the same office on the present occasion, several lords moved that one who had a better voice might sum up, and particularly Mr. Cowper (he was the junior in the case); but, as the duty devolved on the solicitor, according to professional etiquette, and as he alone had prepared himself, he was directed to proceed; and, for the better hearing, several of the

<sup>n</sup> Vernon's Letters.

<sup>o</sup> State Trials, vol. x.

lords, towards the upper end of the House, removed from their seats nearer the bar, as they did the day before to sit upon the woolpacks.

When the accession of Queen Anne had threatened the entire extinction of whig power, fresh patents were granted to none of the king's counsel but Cowper and another. The arrogant favourite of the queen, her dear Mrs. Freeman, struggled, during the two following years, with a pertinacity which no repulse could daunt, to remove Sir Nathan Wright from his office of Lord Keeper, and elevate Cowper in his room. The queen yielded with undisguised ill-will; for Sir Nathan Wright, though sordid and despicable, professed to be a high-churchman and a tory. In October, 1705, the Seals were transferred to the hands of the whig lawyer, with the title of Lord Keeper. The promotion seems to have been scarcely more acceptable to the premier than to his royal mistress. The day after the appointment, in reply to Lord Dartmouth, who was telling him of the high expectation the public entertained of the new occupant of the woolsack, Godolphin coldly answered, that he had the advantage to succeed a man whom nobody esteemed; but the world would shortly have other sentiments, for his chief perfection lay in being a good party-man.<sup>p</sup>

The new lord keeper soon disproved this assertion, and did his country good service in the cabinet. The unconstitutional ambition of Marlborough was with difficulty thwarted by the determination and independence of Cowper, who frankly declared, that, if a commission of Captain General for life were

<sup>p</sup> Lord Dartmouth's Notes to Burnet.



drawn, he would never affix the great seal to it.<sup>a</sup> To the intrigues of Harley against the aspiring General he gave no countenance: but the dragon's teeth had been carefully sown by this artful intriguer, and the bitter fruit was distrust and enmity, which ripened in secret even after his dismissal from the cabinet. The folly of Godolphin in Sacheverell's most injudicious impeachment confirmed his triumph. After the mocking sentence of the lords, his plans were sufficiently matured to enable him to assume the offensive; and the entire disruption of the ministry was soon effected. The dismissal of Sunderland from his office of secretary of state struck the first blow; two months afterwards, Godolphin was unceremoniously cashiered, and in September the queen came to council (says Burnet), and called for a proclamation dissolving the parliament, which Harcourt (now made attorney-general in the room of Montague) had prepared. When it was read, the lord chancellor offered to speak; but the queen would admit of no debate, and ordered the writs for a new parliament to be hastened. Almost all the remaining members of the cabinet were displaced, or resigned their offices, the same day.

Harley, who had not originally contemplated so entire a sweep as this, but only the removal of Godolphin and his immediate dependents, had already, in the most earnest terms, solicited Cowper to retain his office, communicating to him, as a precedent for the treachery, Marlborough's secret correspondence with the jacobite Shrewsbury. The chancellor, instantly on the breaking up of the council, obtained an audience of the queen, for the purpose of delivering up the

<sup>a</sup> Coxe's Marlborough.



seals. She expressed surprise at his determination, combated it with the greatest earnestness, and thrice returned the seals into his hands after he had laid them down; nay, when he persisted in refusing them, absolutely commanded him to take them, adding, "I beg it as a favour, if I may use that expression." Cowper could not refuse (such is his own account of the interview in his diary) to obey this command; but, after a short pause, said he would not carry them out of the palace, except on the promise, that the surrender of them would be accepted on the morrow. "The arguments on my side," said he, "and the professions and repeated importunities of her Majesty, drew this audience into the length of three quarters of an hour." The next day, Harley and Mrs. Masham having been consulted in the mean time, his resignation was accepted without any further difficulty, and the great seal transferred, after a short interval, to Sir Simon Harcourt.<sup>r</sup>

Having dedicated the leisure hours of retirement to writing a spirited vindication of the policy of the late government, he incurred a poignant rejoinder from St. John and the rancorous raillery of Swift. That unscrupulous pamphleteer, then supporting the *Examiner*, and pouring out upon the party he had just deserted the double bitterness of a renegade's hostility, assailed Lord Cowper with the story of his proposals to Miss Culling, choosing for his purpose to suppose there had been an actual marriage, and ingeniously combining, with the imputation upon his lordship's morality, a not less malicious inuendo against his orthodoxy. "This gentleman," says he (in the 22nd number of the

<sup>r</sup> Law Magazine, tit. Cowper.

*Examiner*, published some three months after the change of ministry) “knowing that marriage fees were a considerable perquisite to the clergy, found out a way of improving them cent. per cent. for the benefit of the church ! His invention was, to marry a second wife while the first was alive, convincing her of the lawfulness by such arguments as, he did not doubt, would make others follow the same example. These he had drawn up in writing, with intention to publish for the general good, and it is hoped he may now have leisure to finish them.” Again, in the 26th number, after eulogising the ability and eloquence of the new Lord Keeper Harcourt, Swift contrasts him with his predecessor in the following cutting terms :—It must be granted that he (Harcourt) is wholly ignorant in the speculative, as well as practical, part of polygamy ; he knows not how to metamorphose a sober man into a lunatic ; he is no freethinker in religion, nor has courage to be patron of an atheistical work, while he is guardian of the queen’s conscience.”

That amusing artificer of historical fictions, Voltaire, has improved on this calumny, and, for effect, interwoven other circumstances with his narrative equally fabulous. “It is a fact,” he says, “too well known in England to be denied, that lord chancellor Cowper married two wives, who lived together under the same roof, with a marvellous concord and harmony, which did honour to all three. Many curious persons have still the little treatise which the chancellor composed in favour of polygamy.”\* Some libellous *brochure* of Swift on Mrs. Manley must have imposed, no doubt, on the credulity of the lively

\* Questions sur l' Encyclopedie.

Frenchman. Both Mr. Cowper and his brother, also a barrister of eminence, were unfortunate in their early attachments. An unfounded charge of bigamy darkened the fair fame of one, and the other was actually tried for the supposed murder of Sarah Stout, a young lady to whom he had paid some attention, and who was found drowned in a pit near his lodgings at Hertford, during the assizes. Each brother lived down these sinister passages in their early history, and rose to the judgment seat. The charge of patronizing an infidel publication might have been brought against any nobleman who subscribed to a new edition of the classics. As to a false judgment in lunacy, the facts make us marvel how even the unblushing virulence of faction could have converted this into a matter of imputation. The chancellor had issued a commission of lunacy against Richard Viscount Wenman, the state of whose intellect excited much controversey. Mr. Nicholls, in his annotations on the *Tatler*, No. 40, declares that he was informed Lord Wenman could not tell that 2 and 2 made 4; that he knew not the difference of one piece of money, brass, silver, or gold, from another; that he could not distinguish between a receipt for £5 and one for £50, and had always a governor, at a salary of £40 a-year. Although the paragraph, which refers to the fact of the chancellor having accepted the dedication of some of Toland's or Tindal's heterodox publications, may be censured as unfair, there is reason to surmise that Lord Cowper's opinions on religious subjects, or at least his practice, partook of the license so fashionable in that age, and with the party, in which he had been brought up.

The narrative of his life during the remaining

years of Queen Anne's reign, so far as there is an opportunity of tracing it, comprehends little else than the history of the parliamentary disputes and struggles between the two parties, in all the more important of which he was prominently engaged. He opposed with unremitting hostility the ministerial projects of peace, which terminated in the notorious treaty of Utrecht, and subsequently denounced it in the most energetic terms. "I cannot remove my finger from the original of our misfortunes—the cessation of arms. We were then told, that if a blow had been struck it would have ruined the peace. Would to God it had ruined this peace!"

The breach which had already begun between Oxford and Bolingbroke, and the determination with which the latter pushed his schemes for defeating the Hanover succession, and for the establishment of high church and jacobite ascendancy, caused the introduction, in the session of 1714, of the wicked Schism Bill, the effect of which, had it come into active operation, would have been to subject all classes of dissenters to the most inquisitorial and exasperating persecution. Of this odious measure Lord Cowper was among the foremost antagonists, and signed the spirited protest against its passing, which remains on the Lords' Journals. On the very day on which its operation was to have begun, the designs of its authors became at once abortive, and the whole fabric of their power lay rent asunder by the queen's unexpected death.

The posture of affairs was now altogether changed; the whigs again basked in the full blaze of triumph, and Cowper, who had long been in correspondence with the Elector, and, immediately on the passing of



the Act of Succession in 1706, had written to assure him of his zeal for his person and devotion to his service, was nominated one of the lords justices for the administration of the government until the arrival of the new sovereign. On the very first day after he entered St. James's Palace, the great seal was demanded from Lord Harcourt, with circumstances almost of personal indignity, and forthwith delivered to Cowper, who was declared a second time, on the 21st September, 1714, lord chancellor. In this character he presided at the trial of the rebel lords, and spoke with an eloquence which lives in history. Horace Walpole thus amusingly alludes to the impression it had made upon posterity:—"After the second Scotch rebellion, Lord Hardwicke presided at the trial of the rebel lords. Somebody said to Sir Charles Wyndham, 'Oh, you don't think Lord Hardwicke's speech good, because you have read Lord Cowper's.' 'No,' he replied, 'but I do think it tolerable, because I heard Serjeant Skinner.'"

Cowper retained the seals until the spring of 1718. After the breach between the parties of Walpole and Townshend on the one hand, and Stanhope and Sunderland on the other, and the elevation of the latter to the head of the government, Lord Cowper found that the conduct of affairs was taking a course more and more alien from his principles, and his position in the cabinet daily more unsatisfactory to him. Consistently with his character, he resigned his high office, again to combat for the short remainder of his life in the ranks of opposition. The king accepted his resignation with reluctance, and testified his sense of the ex-chancellor's merits by advancing him (March 18, 1718) to the dignities of a viscount and earl, by the titles of Vis-



Count Fordwich, of Fordwich in Kent, and Earl Cowper. The preamble to his patent was drawn up in terms of the most glowing eulogy by Hughes the poet, on whom he had conferred, unsolicited, an office of considerable emolument in the Court of Chancery, and who was the only one of his dependants whom he expressly recommended to the patronage of his successor, Lord Parker, in the following elegant letter :

“ My Lord,

“ Of the many that were losers by my resigning the great seal, I shall venture to recommend but one gentleman to your Lordship, the bearer, Mr. John Hughes, who served for some little time in the office of secretary for the commissions of the peace, and I should not do that, but for two reasons ; the one, that he had hardly served long enough to make him amends for preparing to execute that trust ; the other, that I am convinced, from the little time he did serve, that your Lordship, if you continue him in that service, will thank me for having recommended him ; and your so doing will be also a great obligation on

Yours, &c.

“ I most heartily wish your Lordship much joy.”<sup>s</sup>

The author of the *Siege of Damascus* was not ungrateful. In an ode written in imitation of Horace, he chants, in not displeasing strains, the praises of his patron.

Let Fame be silent, only tell  
That generous Cowper loves me well,  
Through Britain's realms I shall be known  
By Cowper's merit, not my own :

And when the tomb my dust shall hide,  
 Stripp'd of a mortal's little pride,  
 Vain pomp be spared, and ev'ry tear,  
 Let but some stone this sculpture bear,  
 Here lies his clay, to earth consign'd,  
 To whom great Cowper once was kind.

Shortly before his death, in further proof of grateful homage, Mr. Hughes sent his portrait, by Sir Godfrey Kneller, to Earl Cowper, who thus courteously acknowledges his obligation:

"Sir,

"I thank you for the most acceptable present of your picture, and assure you that none in this age can set a higher value upon it than I do, and shall while I live; though I am sensible posterity will outdo me in that particular. With the greatest esteem and sincerity, your most affectionate Servant,

"COWPER."

"I intend to wait on you very quickly, if I hear you are well enough to be troubled with me."

Such were the terms of free and easy intercourse, in which the wits of Queen Anne's reign lived with the great. The frigid ceremonial introduced by a German court, and the confusion which the ministers of George I. and II. made between literature and Grub-street, suspended for a dreary interval this social intercommuning, pleasant and profitable alike to both author and peer.

It is impossible undoubtedly to claim for Lord Cowper a place in the same rank with a Hardwicke or a Nottingham, but the fact that scarcely any of his decrees were reversed on appeal, (although some of them are recorded to have been unsatisfactory to 'that

great man, Mr. Vernon,' to whom tradition points as the oracle of the Chancery Bar in those days,) is a testimony in favour of the soundness of his judicial determinations, the more unquestionable, because, owing to the comparatively short period for which he held the seals on both occasions, an appeal from his judgment to the House of Lords did not necessarily, as in some later cases, involve a re-hearing of the cause before the same judge.

His personal demeanour on the bench was marked at once by dignity and courtesy. In illustration of this graceful bearing, we find related a story of his considerate kindness towards Richard Cromwell, the former Protector, who in the year 1705 was compelled to apply to the Court of Chancery against a daughter, litigating with him the title to a manor which he inherited from his mother, and on whom the counsel opposed had been casting some unworthy personal reflections.<sup>t</sup> It is doubtful, perhaps, whether the story does not in truth belong to a later period, and to a descendant of the Cromwells, instead of the Protector Richard. Miss Hawkins, however, tells it of Cowper in the following circumstantial manner, on the alleged authority (derived through Charles Yorke) of Lord Hardwicke, who is stated to have been in court at the time<sup>v</sup>—that, indeed, could scarcely be the case in 1705, for he was not then fifteen. “The counsel made very free and unhandsome use of his (Cromwell’s) name, which offending the good feeling of the Chancellor, who knew Cromwell must be in court, and at that time a very old man, he looked round, and said, ‘Is Mr. Cromwell in court?’ On his being pointed

<sup>t</sup> Seward’s Anecdotes.

<sup>v</sup> Hawkins’s Memoirs.

out to him in the crowd, he very benignly said, 'Mr. Cromwell, I fear you are very inconveniently placed, where you are: pray come and take a seat on the bench by me.' Of course no more hard speeches were uttered against him. Bulstrode Whitelock, then at the Bar, said to Mr. Yorke, 'This day so many years, I saw my father carry the great seal before that man at Westminster Hall.'"

In the year 1720, the splendid bubble of the South Sea scheme deluded all ranks of the community into gambling. Lord Cowper was among the few who escaped the contagion, and distinguished himself by an uncompromising opposition to the project, which he described as 'like the Trojan horse, ushered in and received with great pomp and acclamations of joy, but contrived for treachery and destruction.'"<sup>w</sup> He truly predicted, that a contract which put such enormous profits into the pockets of a few interested individuals, could not prove otherwise than prejudicial to the community. In a few months the bubble burst, and almost universal ruin and bankruptcy ensued.

The ex-chancellor's conduct and principles did not entirely exempt him from the imputation levelled against so many eminent persons of that time, of being secretly favourable to the interests of the Pretender. On the discovery of the Jacobite conspiracy in 1722, Christopher Layer, the barrister, was first brought to trial, and made strenuous efforts to save himself, by successive disclosures, and by impeaching those of rank whom he considered most obnoxious to the ministry. In one of his examinations before the secret committee of the House of Commons, this pseudo-

<sup>w</sup> Parliamentary History, vol. vii.

informer declared, that he had been told by his confederate, Plunket, of the existence of a Jacobite Club, called in Plunket's letters, 'Burford's Club,' of which Lord Orrery was Chairman, which met monthly at the several members' houses in town, and that among its members were Lord Cowper and several other Lords and Commons, whom he named—some of them of undoubted Jacobite principles. In another examination, Layer pretended to have received a strange disclosure from Lord Orrery—that Lord Cowper had told him, 200 Tories and 90 Grumbletonians (a cant term by which the Whigs were designated among the Jacobite party) would try their last efforts in the House of Commons.\* One of Plunket's letters also, preserved in Macpherson's collection of original papers, insinuates, that Cowper, the late Chancellor, if he could get off handsomely from the whigs, would join with the Princess Anne in all her measures.

That this accusation, which rested altogether on the assertions of an Irish Jesuit and spy, was not less unfounded than malicious, it is impossible to doubt. Lord Cowper expressed the strongest indignation at the charge, and declared that, "after having, on so many occasions and in the most difficult times, given undoubted proofs of his hearty zeal and affection for the Protestant succession, and of his attachment to his Majesty's person and government, he had just reason to be offended to see his name bandied about in a list of a chimerical club of disaffected persons, printed in a parliamentary report, on the bare hearsay of an infamous person, notoriously guilty of gross prevarication. He even dropped a hint, that such

\* State Trials, vol. xiv.



falsehoods in the confessions were enough to give an air of fiction to the whole of the conspiracy, and concluded by a motion for summoning Plunket to the bar of the House, for examination on the subject. The government, however, refused to assent to Plunket's examination at the bar, and Lord Cowper thought it necessary to circulate a solemn declaration of his innocence, (which was published in the *Historical Register* for 1723,) affirming his entire ignorance of the existence of the supposed club, and even of the persons of many of its alleged members.

He was not deterred by the promulgation of these calumnies from opposing, in the most uncompromising manner, all the arbitrary proceedings of the government, in the prosecution of the conspirators. He had already ineffectually resisted the suspension of the Habeas Corpus act, at least for a longer period than six months, and now waged an unremitting, though equally fruitless, war against the bills of pains and penalties, by which the government determined to punish Atterbury and his co-conspirators, on evidence of the most ultra-legal and inconclusive character. His speech, on the third reading of the bill against Atterbury, is by far the most perfect and interesting specimen of his parliamentary eloquence which has been preserved to us—at once masterly in argument, admirable in illustration, rich and copious in diction and ornament.<sup>y</sup>

“I am, my lords, against this bill, not only because I think nothing has been offered sufficient for the support of it, but because I think the honour and dignity of the Crown, the dignity and authority of this

<sup>y</sup> *Parliamentary History*, vol. viii.

House, and the credit and reputation of the House of Commons, concerned in the event of it. My lords, the proceedings of that House have been in this case very remarkable and uncommon. They voted the bishop guilty of high treason, the very first thing they did, and it was reasonable to expect that the consequence of that vote would have been an order for an impeachment in Parliament, or a prosecution in the ordinary course of law. But, my lords, we see they have taken another method, and that without weighing what the consequences might be. They have taken a method, whereby they have made themselves both judges and accusers. They could not, as judges, decently proceed against the bishop without hearing him, and therefore they gave him a day for that purpose, and thereby they discovered the dilemma into which they had run themselves. They found themselves obliged to hear him, and yet they could not acquit him, because they had already prejudged him. It is not therefore to be wondered that they have passed this bill. . . The objections that concern the king appear to me to be unanswerable, not only with regard to this bill, but to all bills of attainder in general. I think they ought never to be allowed, but when the offender flies from justice or is in open rebellion, and, perhaps, the notoriety of the fact may be some excuse for the extraordinariness of the proceeding.

“ For, my lords, is it come to this at last, that, after so much grimace, so much noise and stir, after committing the bishop for high treason, after voting him a traitor and treating him as such, must it at length come out, that there is no legal evidence against him? To palliate the matter a little, a distinction is

endeavoured to be made between legal evidence and real evidence, or, between such evidence as our law requires and such as, in natural justice and equity, ought to be admitted. But, my lords, this is a distinction without a difference: for what is evidence of a fact before any judicature whatsoever, but such testimony as the nature of the case requires to induce a moral certainty of the truth of the thing testified. The greater or less consequence the case is of, the more or less proof is required to induce such certainty.

“ One of the learned gentlemen at the bar (Mr. Wearg), I suppose, out of pure zeal for this bill, and not with a design to misguide his audience, did roundly affirm before your lordships that no evidence, strictly speaking, was legal but what was mathematical. I am confident that gentleman would not have given this as his opinion, under his hand, at his chamber, because he knows it is directly contrary to truth. He knows very well that no offender that puts himself upon his trial can be convicted but upon the oath of one or more witnesses; he dares not deny but that such conviction is founded upon legal evidence, strictly so speaking, and no one will pretend to say that any evidence of witnesses can be called mathematical.

“ But here these post-office clerks are forced to call in aid a messenger and a servant, to fix the handwriting of the letters they produce; the letters themselves are unintelligible, and therefore the assistance of the decipherers, and some cant names must be added, before they can wire-draw treason out of them. My lords, these decipherers refuse to give your lordships any reason for the construction they have made—they shelter themselves by saying that to give you a reason would be to discover their art. Happy art,

indeed that shall enable the artist to swear a man into high treason, and yet it shall not be in the power of the accused person to disprove him ! I do not find that these gentlemen pretend to act by unerring rules ; they themselves own they may be mistaken, and therefore, until your lordships are let further into their secret, you will judicially look upon the art of decyphering to be no more than the art of guessing, and esteem him that guesses best to be the best decypherer.

“ But, my lords, this is not the first instance wherein I have observed judgment and opinion to be confounded and mistaken, the one for the other, and that, too, in a very gross and dangerous manner. My lords, men’s opinions, generally speaking, are nothing else but their fancies or imaginations, and are usually grounded upon personal pique or party prejudice : these are weak and slender foundations, and have nothing to do, and I hope, in England, never will have any thing to do, where a man’s life, his liberty, or his property is concerned. But, my lords, a man forms his judgment according to the evidence that is offered him ; that alone is his rule, and as the perspicuity or uncertainty of that appears, justice requires a determination accordingly. But, as the bishop’s case now stands, the evidence of his guilt appears very dark, and, for ought I can observe, is like to continue so.”

The peroration is very beautiful : “ My lords, I have now done, and if, upon this occasion, I have tried your patience, or discovered a warmth unbecoming me, your lordships will impute it to the concern I am under, lest, if this bill should pass, it should become a dangerous precedent for after ages. My zeal as an Englishman for the good of my country



obliges me to set my face against oppression in every shape, and wherever I think I meet with it (it matters not whether one man or five hundred be the oppressors), I shall be sure to oppose it with all my might : for, vain will be the boast of the excellency of our constitution, in vain shall we talk of our liberty and property, secured to us by laws, if a precedent shall be established to strip us of both, where both law and evidence are confessedly wanting. My lords, upon the whole matter, I take this bill to be derogatory to the dignity of parliament in general, to the dignity of this House in particular : I take the pains and penalties in it to be much greater or much less than the bishop deserves. I take every individual branch of the charge against him to be unsupported by any evidence whatsoever. I think there are no grounds for any private opinion of the bishop's guilt, but what arises from private prejudice only ; I think private prejudice has nothing to do with judicial proceedings ; I am, therefore, for throwing out this bill."

With this honourable display of principle and public spirit the distinguished career of Lord Cowper was closed. His health had been long delicate, and had for years been partially sustained by a strict adherence to regimen in exercise and diet. Immediately on the prorogation of parliament, within a fortnight after the passing of the bill of pains and penalties, he retired, over-wrought with the exertions of the session, to his house in Hertfordshire, in the hope of recruiting his shattered health by the enjoyment of quiet and fresh air ; but his constitution was enfeebled beyond recovery ; his strength daily declined, until, entirely worn out, on the 10th of October, 1723, he breathed his last, and was buried on the 19th of



the same month in the parish church of Hertingfordbury. That church, which contains splendid monuments to his brother and other less eminent members of his family, has not even a tablet to record the talents and virtues of the distinguished founder of their nobility. More lasting, however, than storied urn or marble bust are the ineffaceable characters he has traced in his country's annals, among the ablest of her statesmen, one of the purest of her patriots, and a consummate orator. It might be said of him, as Ben Jonson said of the Lord Verulam, that he commanded where he spoke, and had his judges angry and pleased at his discretion. No man had their affections more in his power; and the fear of every man that heard him speak was, lest he should make an end.<sup>z</sup> In a paper of the *Spectator*, dedicated to his honour under the name of Manilius, it is well said:—"His merit fares like the pictures of Raphael, which are either seen with admiration by all, or at least no one dare own he has no taste for a composition, which has received so universal an applause."<sup>a</sup>

<sup>z</sup> Calamy's Memoirs.

<sup>a</sup> Spectator, No. 467.

## CHAPTER II.

---

ANOTHER Chancellor, of whig creation, under George I., of less repute, and ungraced with pomp of heraldry, was Peter King, the only son of Mr. Jerome King, a substantial grocer and dry-salter in the city of Exeter. He was born there in the year 1669, and designed by his father for the useful though inglorious occupation, which had secured to himself a comfortable income. Young King, after acquiring the rudiments of an ordinary provincial education, at the grammar-school of his native city, was introduced behind the counter, to learn the thriving business to which he was taught to look for his future support. Who<sup>a</sup> (says a biographer, with amusing *naïveté*), that had stepped into the shop of Mr. Jerome King, and had there seen his son up to the elbows in grocery, could have perceived in him a future Chancellor of Great Britain! But the prospect of knowledge, and some dim glimpses of ambition visited him even through this ungenial atmosphere. All the pocket-money he could hoard he devoted to the purchase of books, and every hour of leisure to their eager perusal. Bred up chiefly among Dissenters, it is not surprising that his studies should have comprehended inquiry into those religious questions which, at the period of the Revo-

<sup>a</sup> Noble's continuation of Granger.

lution, occupied and divided the country ; but it cannot be doubted that his relationship and intercourse with the illustrious Locke, his near kinsman by the mother's side, contributed largely to impress his mind with the superior importance and interest of such subjects of investigation.<sup>b</sup>

Before completing his twentieth year, he had put the finishing hand to a work of some extent, an "Inquiry into the Constitution, Discipline, Unity, and Worship of the Primitive Church, that flourished within the first 300 years after Christ ; faithfully collected out of the extant writings of those ages"—a title which of itself inferred the expenditure of much research and learning, of a kind that would have been supposed least likely to attract the pursuit of a young man in his condition of life. The question of a comprehensive union between the Established Church and the Dissenters, by the mutual concession of some of the points of external discipline and ritual upon which they differed, had at several periods occupied the attention of the legislature and the clergy. The Revolution appeared to the Dissenters to furnish them with a desirable opportunity for reviving this project. They felt slight satisfaction in the relief then afforded them by the passing of the Toleration Act, which they regarded less as an extension of favour, than as an injurious invasion of their right to an equality of religious profession. They had warmly recommended themselves to the countenance of the new Sovereign, himself a Calvinist, by the assistance they had rendered him in his enterprise ; while, on the other hand, some of the most influential in the Establishment had denied his right and abjured his supremacy. They drew up,

<sup>b</sup> Law Magazine.

accordingly, various plans of accommodation or comprehension, in all of which they sought to be treated as the equals in every respect of the Church ; and the proposed terms were such as to imply a preference in the frame of their own constitution, discipline, and worship, over the established forms. The same question was also, by the King's recommendation, submitted to the discussion of the bishops and clergy in convocation.

At this conjuncture, and in order to render all the aid in his power to the design of a comprehension, our young author employed himself upon the inquiry which formed the subject of his work.

It sealed the emancipation of the writer from the unwelcome occupation to which he had been destined.<sup>c</sup> At the earnest recommendation of his illustrious kinsman, his father acquiesced in his desire to seek, in the profession of the law, the field in which his talents and knowledge might be applied with the best prospect of finding their due reward. As Locke bore, from his own experience, little love towards the maternal discipline of the English Universities, where, perhaps, the subscription of the articles formed also an obstacle to the introduction of the young champion of Presbyterianism,<sup>d</sup> the liberal philosopher recommended that his pupil should repair, for the prosecution of the preparatory studies, to the university of Leyden. There, accordingly, King fixed his residence in 1692.

He lived even then in the enjoyment of no common acquaintance ; his letters to Locke show him in communication with Newton and Somers, and in familiar intercourse with the Lords Peterborough, Shaftesbury, and Pembroke. To these advantages it

<sup>c</sup> Lord King's Life of Locke.      Law Magazine.

was, doubtless, that he owed also his introduction into parliament, being returned at the general election in 1700, for Beeralston, in conjunction with Cowper, this little close borough returning two future Lord Chancellors. For this borough he continued to sit without interruption, through all the parliaments of Queen Anne's reign, a zealous partizan, as might be inferred from his early pursuits, of the whig principles of that day.

It is evident that Locke regarded his kinsman's success in this arena, and the fulfilment of his duties in the House, as of much more importance than his devotion to professional engagements. He writes to the young member, on the commencement of the session of 1700-1, strongly pressing him to remain in town instead of going the circuit; advice not very palatable to a barrister of hardly two years' standing, just launched into practice. "I am as positive as I can be in anything, that you should not think of going the next circuit. I do not, in the mean time forget your calling; but what this one omission may be of loss to you may be made up otherwise. I am sure there never was so critical a time, when every honest Member of Parliament ought to watch his trust, and that you will see before the end of the next vacation. I, therefore, expect in your next a positive promise to stay in town. I tell you, you will not, you shall not, repent it." In a letter, a few days later in date, he writes—"It is my private thought that the Parliament will scarce sit even so much as to choose a Speaker, before the end of the term; but, whenever he is chosen, it is of no small consequence which side carries it, if there be two nominated or at least in view, as it is ten to one there will be, especially in a Parliament chosen



with so much struggle. Give all the help you can in this, which is usually a leading point, shewing the strength of the parties."

The same letter conveys some excellent counsel to the tyro senator :—"My next advice to you is, not to speak at all in the House for some time, whatever fair opportunity you may seem to have, but, though you keep your mouth shut, I doubt not you will have your eyes open to see the temper and observe the motions of the House, and diligently to remark the skill of management, and carefully watch the first and secret beginnings of things and their tendencies, and endeavour, if there be danger in them, to crush them in the egg. You will say, what can you do, who are not to speak. It is true, I would not have you to speak in the House, but you can communicate your light or apprehensions to some honest speaker, who may make use of it ; for there have always been very able members who never speak, who yet, by their penetration and foresight, have this way done as much service as any within those walls. And hereby you will more recommend yourself, when people shall observe so much modesty joined with your parts and judgment, than if you should seem forward, though you spoke much."

This advice, as might have been foreseen, found but a reluctant observance. For upwards of a year, however, Mr. King obeyed his cousin's command. When he did speak, in February, 1701, we find the philosopher inculcating a fresh caution. "I am glad the ice is broke, and that it has succeeded so well ; but now that you can speak, I advise you to let them see you can hold your peace, and let nothing but some point of law, which you are perfectly clear in,

call you up again.” It would appear, from a letter in the following month, that Mr. Locke still pressed his kinsman against his own inclination to prefer politics to law—the Syren mistress to the faithful wife.

“ Dear Cousin, I imagine, by what you say of the circuit, that you have not duly considered the state in which we are now placed. Pray reflect upon it well, and then tell me whether you can think of being a week together absent from your trust in parliament, till you see the main point settled, and the kingdom in a posture of defence against the ruin that threatens it. The reason why I pressed you to stay in town was, to give the world a testimony how much you preferred the public to your private interest, and how true you were to any trust you undertook: this is no small character, nor of small advantage, to a man coming into the world. Besides, I thought it no good husbandry for a man to get a few fees on circuit and lose Westminster Hall. For I assure you Westminster Hall is at stake, and I wonder how any one of the House can sleep till he sees England in a better state of defence, and how he can talk of any thing else till that is done.”

Mr. King appears to have resorted with habitual deference to the wisdom and experience of the philosopher for advice and guidance, and in return to have been regarded by him with the warmest kindness and esteem. In a letter, dated June, 1704, a few months before Locke’s death, he presses his young friend in the most affectionate terms to pay him a visit, as the highest gratification which could console his decline.

“ All appearances concur to warn me that the dissolution of this cottage is not far off. Refuse not therefore to help me to pass some of the last hours of

my life as easily as may be, in the conversation of one, who is not only the nearest but the dearest to me of any man in the world. I have a great many things to talk of to you, which I can talk of to nobody else about. I know nothing at such a time so desirable and so useful as the conversation of a friend one loves and relies on. It is a week free from business, or if it were not, perhaps you would have no reason to repent the bestowing a day or two upon me. Make haste therefore on Saturday, and be here early. I long till I see you. I writ to you in my last to bring some cherries with you, but fear they will be troublesome to you, and these things that entertain the senses have lost with me a great part of their relish; therefore give not yourself any trouble about them: such desires are usually but the fancy seeking pleasure in one thing, when it has missed it in another, and seeks in vain for the delight which the indisposition of the body has put an end to. When I have your company, I shall forget these kind of things.

“ I am, dear cousin,

“ Your most affectionate,

“ JOHN LOCKE.”

He died in the following October, having by his will bequeathed to King half his library and a considerable portion of his estate.

In the House, Mr. King was a frequent speaker, and, as Locke suggested, upon points of law, though sometimes to little purpose. When the Recruiting Act was in Committee, he offered an amendment, that the men should be raised out of those that had no callings or visible way of livelihood. This, Mr. Attorney General said, would make what they intended ineffectual,

since it might be argued, that whoever had arms or legs had a visible way of livelihood. On a subsequent day, January 1707-8, Mr. Attorney moved an amendment to leave out the exemption for such as had a visible way of livelihood, and insisted that such might be liable as had no estate real or personal. Mr. King took exception to this, that it might include all labourers in husbandry or elsewhere, and would extend to every body's children, where the fathers were living and held the estate, whether it was more or less. Neither tinkering would suffice; their description of the persons liable to be inlisted was left out, and words of some meaning inserted instead—"those who make no use of a lawful calling."

In the year 1709-10, King was one of the managers named to conduct the prosecution against Sacheverell, being appointed to maintain the second article of the impeachment,\* which accused the reverend seditious of making covert attacks against the toleration granted at the Revolution, charging all, as "false brethren with relation to God, religion, and the church, who defended toleration or liberty of conscience; and alleging that it was the duty of superior pastors to thunder out the ecclesiastical anathemas against persons entitled to the benefit of the toleration," which sentences he insolently dared and defied any power to reverse. For the discussion of topics such as these, King was well prepared by his theological learning, a department of knowledge not usually very familiar to lawyers, and distinguished himself in consequence, but more by information and research than by the charm of eloquence.

Not long afterwards, the same advantages again came prominently in aid of his professional duties in defence of the celebrated Whiston, when under prose-

\* State Trials.



cution before the court of delegates, for his anti-trinitarian heresies. Not only did Sir Peter (as did his junior, Mr. Lechmere) decline to receive a fee for his exertions in this case, but, by his spirited protest, he was the means of rescuing his client from a threatened exercise of most arbitrary and illegal power. When none of the common-law judges would concur in a sentence against the accused, the rest of the court, composed of bishops and civilians, were on the point of determining to proceed without them, until King, declaring that his client should then prosecute for the penalties of a '*præmunire*,' which a sentence so pronounced would incur, alarmed the tribunal of polemics by that courageous remonstrance into a reluctant acquiescence.<sup>f</sup>

The honours which Sir Peter shortly afterwards received, at the hands of the new Sovereign, attested his unswerving fidelity to the cause and champions of whiggism. On the arrival of the king at St. Margaret's Hill, the boundary of the borough of Southwark, after his landing at Greenwich, he was received by a procession of the corporate body of the metropolis, and addressed by their learned Recorder in a congratulatory speech, the last duty he was called upon to perform in that character. A few weeks afterwards, (Nov. 14, 1715,) Lord Trevor being displaced from the chief-justiceship of the Common Pleas, Sir Peter King succeeded to the vacant seat.

Naturally of a mild and benevolent disposition, Chief Justice King administered the criminal law on circuit in a spirit of patient and cautious humanity. A circumstance, much to his credit, is disclosed in the evidence given before the committee of the House of

<sup>f</sup> Whiston's Memoirs.



Commons, for inquiring into the state of the gaols in the year 1729. Some years before, when he sat in the Common Pleas, a complaint had been preferred to him from the prisoners in the Fleet, that they were immured in close and unwholesome confinement within the prison walls. The warden urged in answer that, from the insecurity of the prison, there would be continual danger of the prisoners escaping, were they allowed exercise. "Then you may raise your walls higher," was the reply of the humane judge, "but there shall be no prison within a prison."<sup>g</sup>

Sir Peter King continued to occupy his seat in the Common Pleas for upwards of ten years, until the crimination and disgrace of Lord Chancellor Maclesfield opened the way for his advancement to a higher, and, as it proved, equally secure elevation. On the chancellor's resignation of the great seal in January, 1724-5, the chief-justice, already anticipating with confidence the possession of that much-coveted signet of wealth and power, was appointed speaker of the House of Lords, and presided at the ex-chancellor's trial. As soon as the issue of it rendered the return of the disgraced favourite to office impossible, he received the seals from the hands of the commissioners to whom they had in the mean time been committed, with the rank of lord-chancellor; and was at the same time (May 25, 1725,) raised to the peerage by the title of Lord King, Baron of Ockham, in the county of Surrey, where he had many years before purchased from the Sutton family a handsome mansion and considerable estate. The lucky peer contrived to have a pension of £6,000 a-year, payable

<sup>g</sup> Parliamentary History, Vol. 9.

out of the post-office, settled upon him in addition to the ordinary emoluments of his office ; and, in consideration of the loss of income which the chancellorship had sustained, by the judgment of the House of Lords declaring the sale of subordinate offices in the court illegal, an additional allowance of £1,200 a-year, issuing out of the Hanaper office. Locke, it would appear, had not instilled into his nephew the sinfulness of greed.

The first duty which devolved upon Lord King in the court of chancery, was to provide securities against the recurrence of frauds, similar to those which had led to the disgrace of his predecessor. A voluminous set of orders was in consequence drawn up under his superintendence, in November 1725, providing for the deposit and transfer of the suitors' moneys in such a manner as to render any misappropriation a matter of extreme difficulty ; and, in the following session of parliament, this plan was legalized by statute, with the additional security derived from the creation of the office of accountant-general. This service performed, the catalogue of his lordship's merits as the dispenser of equitable jurisprudence, excepting always a strict and unimpeachable integrity, may be said to be complete ; in all the other requisites for the formation of an equity judge, he fell far behind the qualifications and attainments of his predecessor. Neither his practice nor experience had been such as to prepare him for the administration of equity law, nor were his intellectual nor even his physical powers sufficient to enable him, like Lord Macclesfield, to triumph over the difficulties of a novel position. With the dogged diligence, indeed, which had always distinguished him, he laboured zealously and pain-

fully, even to the impairing and ultimate sacrifice of his health.

A lethargic disease, partaking probably of an apoplectic character, used frequently to oppress the chancellor, while sitting on the bench. Mr. Bentham, in a letter, printed among Cooksey's Memorials of Lord Somers, assures us, that this was the occasion of no prejudice at all to the suitors ; for that " Sir Philip Yorke and Mr. Talbot were both men of such good principles and strict integrity, and had always so good an understanding with one another, that, although they were frequently, and almost always, concerned for opposite parties, in the same cause, yet the merits of the cause were no sooner fully stated to the court, but they were sensible on which side the right lay, and accordingly the one or the other of these two great men took occasion to state the matter briefly to his lordship, and instruct the registrar in what manner to minute the heads of the decree." We may observe that the great majority of cases were at that time of day heard at the chancellor's house, where such arrangements could be carried into effect much more snugly, than before the larger audience of Westminster Hall, or Lincoln's Inn. If, however, we may judge from the number of appeals that were prosecuted from Lord King's decrees, more of which were reversed than of any other chancellor during the same period of time, this equitable and compendious mode of dispatching the business of the court was not so perfectly satisfactory to the suitors as it is represented to have been.<sup>b</sup> Many of his unreversed judgments will also be found to have been impeached or qualified by subsequent authorities.

<sup>b</sup> Parke's History of the Court of Chancery.

With the gratified or still hoping candidates for patronage and promotion—

“A judge is just, a chancellor juster still :”

from the lips of disappointed and dissatisfied expectants the judgment is very different. The Chancellor's quondam acquaintance and client, Whiston, on applying to him for the gift of some preferment to a friend, was no less mortified than surprised at the revolution which, according to his account, the seductions of wealth and power had wrought in the character and feelings of the once independent and high-minded advocate. “Upon my application to him,” says this honest humorist,<sup>i</sup> “I found so prodigious a change in him, such strange coldness in matters that concerned religion, and such an earnest inclination to money and power, that I gave up my hopes quickly. Nay, indeed, I soon perceived that he disposed of his preferments almost wholly at the request of such great men as could best support him in his high station, without regard to christianity; and I soon cast off all my former acquaintance with him. Now, if such a person as the Lord King, who began with so much sacred learning and zeal for christianity, was so soon thoroughly perverted by the love of power and money at court, what good christians will not be horribly affrighted at the desperate hazard they must run, if they venture into the temptations of a court hereafter? “*Exeat aulâ,*” concludes the disappointed moralist, “*qui vult esse pius!*” A consolatory reflection for all our legal dignitaries withdrawn from the temptations of office!

This sweeping bill of indictment against the chancellor's probity and consistency included a more

<sup>i</sup> Memoirs of Whiston, by himself.



specific charge, and one which tells heavily against the sincerity of his lordship's religious professions. "When I was one day talking with the lord chief justice King, who was brought up among the dissenters at Exeter, under a most religious, christian, and learned education, we fell into a dispute about signing articles which we did not believe for preferment, which he openly justified, and pleaded for it that we must not lose our usefulness for scruples! Strange doctrine in the mouth of one bred up among dissenters, whose whole dissent from the legally established church was built on scruples! I replied, that I was sorry to hear his lordship say so, and desired to know whether in their courts they allowed of such prevarication or not. He answered they did not allow of it, which produced this rejoinder from me, 'Suppose God Almighty should be as just in the next world as my Lord Chief Justice is in this, where are we then?' To which he made no answer. And to which the late Queen Caroline added, when I told her the story, 'Mr. Whiston, no answer was to be made to it.'"

On Lord King's appointment to the chancellorship, George I. had made a struggle to retain in his own hands the distribution of ecclesiastical patronage. His lordship, however, opposed a stout and ultimately successful remonstrance against this unwelcome invasion of one of the most attractive appurtenances of his dignity. He thus relates the dispute in his diary. "About July 8th, the King told me that he expected to nominate to all benefices and prebendaries that the Chancellor usually nominated to. I told him, with great submission, that this was a right belonging to the office, annexed to it by act of parliament and



immemorial usage, and I hoped he would not put things out of their ancient course. Sunday, July 16th, I then saw him again: he seemed now very pleasant; he told me I should go on as usual." If Whiston's account of the manner in which the Chancellor discharged his trust in this respect be at all correct, his Majesty could hardly have done the state dis-service by persevering in his original design.

Lord King retained his office for several years, through the gradual decay of his bodily and mental faculties, until at last, his health being entirely broken, he was compelled, at the close of the year 1733, to relinquish the possession of the seals. He lingered in a hopeless decline for some months longer, and expired in the evening of the 29th July, 1734, having been struck speechless by an apoplectic fit some hours before, in the 66th year of his age.

Another legal pupil of the good old whig school, distinguished from the era of the revolution, equally devoted to their creed, more fearless in the expression of his opinions, more wayward, and far more independent, was Sir Joseph Jekyll. This incorruptible lawyer and honest statesman was the eldest son of Mr. John Jekyll, a merchant in London, who had been fined 300 marks for opposing the court in the election of sheriffs, and therefore adjudged by Jeffries to be guilty of a riot. Adopting his father's politics, and marrying a sister of Lord Somers, he was appointed, during his chancellorship, chief justice of Chester. With characteristic firmness, he refused, on the death of King William, to resign his office, defied the court to supersede him or appoint Mr. Conyers in his room; even when threatened with a state prosecution, prevailed over the intrigues of ministers, and retained his

seat. He wished to litigate the question, whether judges could be removed on the demise of the crown, but the government were as wary of accepting his challenge, as that residue of the Long Parliament, which refused to meddle with Judge Jenkins. The stedfast independence of Mr. Jekyll's political career, irrespective of corrupt influence not less than his judicial course, appears in that venal age to have been considered something prodigious, and to have exacted the half-wondering, half-sarcastic eulogy of Pope. In his dialogues, after the manner of Horace, he writes :—

“ A horse-laugh, if you please, at honesty,  
A joke on Jekyll, or some good old Whig,  
Who never changed his principles, or wig ;  
A patriot is a fool in every age,  
Whom all Lord Chamberlains allow the stage,  
These nothing hurts, they keep their fashion still,  
And wear their strange old virtue, as they will.”

This true patriot (a name of honour, and above suspicion, had all who aspired to it resembled him) was always to be found in the House of Commons, advocating the cause of sound public morals, of justice, and mercy. When articles of impeachment were moved against the Duke of Ormond, he strongly urged moderation ;<sup>k</sup> saying that, if there was room for leniency, he hoped it would be shewn to that noble, generous, and courageous peer, who, for many years, had exerted those great accomplishments for the good and honour of his country. He also opposed the eleventh article of impeachment against Lord Oxford, accusing him of treason, for advising the French king by what method the fortress of Tournay might be gained from the States General, much to the an-

<sup>k</sup> Parliamentary History, vol. vii.

noyance of the prime minister, who would gladly have seen the law diverted to purposes of faction. When Mr. Walpole, from the Committee of Secrecy, reported the articles against the late lord treasurer, Sir Joseph Jekyll said, "that it was ever his principle to do justice to everybody, from the highest to the lowest, being persuaded that it was the duty of an honest man never to act by a spirit of party; that he hoped he might pretend to have some knowledge of the laws of the kingdom, and, as in the Committee of Secrecy he had taken the liberty to differ from his colleagues, he would not scruple to declare now to the whole House that, in his judgment, the charge in question did not amount to high treason."<sup>1</sup> Most of the other members of the Committee of Secrecy were offended at this speech, and Walpole retorted that men superior to him in knowledge of the laws thought the contrary.

No lawyer can doubt for a moment that Jekyll was right, and did well to resist the House of Commons' law. We should be inclined to scrutinize the wisdom of any measure which he withstood, and should have no doubt that a scheme was against humanity when he denounced it. He vigorously opposed the fiscal tyranny of raising £100,000 on the Roman Catholics, urging that Queen Elizabeth never put a similar severe law in execution. When that act was carried, and a clause added for excepting the Papists in Scotland, the sturdy patriot said "that he knew no reason why the Scotch should be excused from paying their proportion of this extraordinary tax, unless it was, because forty-five Scots representatives in that House always

<sup>1</sup> Parliamentary History, vol. vii.

voted as they were directed : but, if that was the reason, it was to be feared lest Cornwall, which sends up almost an equal number of members, might, upon the same consideration, claim an exemption from taxes." His remarks were often clothed with all the terseness of epigram. Discoursing of the plot in 1723, he said, "As there are people who know nothing of the plot and yet believe it, so there are others that know the whole plot and yet pretend not to believe it."

That popularity was not his object, the master of the rolls proved by his subsequent support of the excise scheme.<sup>m</sup> "As it has been for some months the subject of conversation amongst people of all ranks and qualities, I was fully resolved to suspend my judgment in relation to it, till I should hear it fully opened and laid before this House. There were, indeed, such clamours raised without doors, and it was represented in so many hideous shapes, that I cannot say but I came this morning to the House, if prejudiced, rather against than in favour of any such project ; but still I came, as I always do, altogether undetermined and resolved so to remain till I was fully informed by other gentlemen, in the course of the debate, of all those facts which ought to be known, before any determination can be made in an affair of so great importance.

"With me it hath always been a principle to hearken to any reasonable scheme for suppressing of those frauds which are committed against the public. I look upon the persons guilty of such frauds as the greatest criminals ; and, if they have any character, if

<sup>m</sup> Parliamentary History, vol. viii.



they observe any decency in private life, I take it to be only because they have no opportunity to do otherwise ; for that man must have a very whimsical conscience who cheats the public, and yet would scruple to cheat a private man, if he had the same opportunity." The principle is just, but always eluded : what man of the world would not smuggle if he could ? During a modern debate in the House, a financier of less rigid public virtue waved his bandana in the face of the chancellor of the exchequer, and gloried in the avowal that it had paid no duty.

Among the valuable statutes which this excellent legislator obtained was the bill to appropriate the first fruits and tenths, to form a fund for augmenting the poorer livings.

His admirable moral efforts against gin-drinkers commanded less success, though well seconded by the pencil of Hogarth : the act was so unpopular that it could only be established by military force ; and informers against the retail dealers rarely escaped from the vengeance of the multitude.

His energies, ever active in the cause of morality, sought to crush the fashionable crime of duelling. When two gentlemen fought a duel in the park, and one of them, Mr. Buckingham, was killed, he brought in a bill to prevent all duelling in future, by making both principals and seconds guilty of murder. But it shared the fate of a similar measure introduced by Sir Peter King. The current of popular prejudice ran too strong to be turned by Sir Peter or Sir Joseph, and duels still continued to flourish, untouched by act of parliament.

A like futile attempt had been made by Sir Francis



Bacon, when attorney-general in 1615, to tame and reclaim, as he termed it, the evil of bewitching duels,<sup>a</sup> by proceeding in the Star Chamber against one Priest for writing, and Wright for carrying, a challenge. He declaimed with great eloquence against "this fond and false disguise, or *puppetry of honour*," and instanced that the practice was condemned by the most warlike nations, whether generous or barbarous, the Greeks and Turks. He told how a council of bashaws reproved the survivor of a duel. "Are there not enough Christians to kill? Did you not know that whether of you shall be slain the loss would be the Great Seignior's?" Your lordship (Sir G. Coke) said notably, that a man might be as well *fur de se* as *felo de se*, if he stole out of the realm for the bad purpose of duelling." The court of Star Chamber (would that its censures had been always as justly levelled!) committed the champions of the duel to the Fleet, ordered Priest to pay £500, and Wright 500 marks, and that they should, at the next assizes for Surrey, publicly acknowledge their offence. They directed their decree, with the speeches of Coke and Bacon, to be published; but the evil lay far beyond the reach of rhetoric.

Though his bill against duelling proved equally abortive, Sir Joseph Jekyll obtained the praise of the generous Steele, for endeavouring by vigilance and care to soften the disposition of the heart,<sup>o</sup> and adopting the sentiment of a noble youth, who said that he triumphed more in being a second to prevent, than he should have done in being one, to promote murder.

But, if the worthy lawyer could not compel morality

by acts of parliament, he set an example of sound reforms to the body politic, and strove, during the whole course of his long career, to raise the standard of public morals, at a time of fearful depression, when all the forms of speech and modes of thought had become lamentably mean and low. We regret that the Master of the Rolls should have ceased to hold a seat in the House of Commons. Attired in his judicial robes, with all the authority of his high station, he delivered his opinions in that deliberative assembly under as deep sense of responsibility, as if presiding on the seat of justice, and commanded, from weight of character, the attention which would have been denied to a far more eloquent speaker. It is a remarkable proof of the little subjection to undue influence which the close borough system imposed, that Sir Joseph Jekyll always spoke and voted as an independent member, though returned to parliament the nominee of some peer or powerful patron. His prudent method of securing a seat is referred to as a useful example by the lively Lady Mary Wortley Montague, when inditing a note of conjugal remonstrance to her husband, for incurring lavish expense in the elections of 1714.<sup>p</sup> “’Tis a surprise to me that you cannot make sure of some borough, when a number of your friends bring in so many parliament-men, without trouble or cost. ’Tis too late to mention it now, but you might have applied to Lady Winchester, as Sir Joseph Jekyll did last year, and by her interest with the Duke of Bolton brought him in for nothing, and I am sure she would be more zealous to serve me than Lady Jekyll.”

The worthy Master of the Rolls was one of the very few who never acted on a foregone conclusion,

• Lady M. Montague’s Works by Lord Wharncliffe, vol. i.

but whose vote depended on the debate. When discussing some consequence of the union, in December 1707, he felt no shame in declaring that his opinion had been wholly changed by what had fallen from Sir David Dalrymple. Writing an apology to the Duchess of Marlborough for his vote, Mainwaring says, "My opinion was not very wild on the Scotch business, since Sir Joseph Jekyll, who had been on the other side, made a recantation speech, said he was convinced by the debate, and voted as I did." The duchess herself speaks with much bitterness of his persisting in this course to the end, careless whose prejudices he might oppose. "The Master of the Rolls," she writes in 1738, "was on the side of the minority yesterday; he has certainly done a great deal of mischief, though he is called honest. But I have hardly known him to succeed but when he is on the wrong side, and yesterday he said gravely something so weak it made his friends smile, that our hopes now were in the Czarina. She is a good way off."<sup>a</sup> Remote as the vast territories of Russia might be, the same hope half a century later fell from the lips of a greater statesman—Mr. Pitt.

But it was the fashion to gird at the strange old virtue of one, who, however unpopular his views might be, would still think and speak for himself. "He was an indifferent speaker," says Lord Mahon,<sup>r</sup> "and somewhat open to ridicule in his dress and deportment, but a man of the highest benevolence and probity. He had that sort of wavering temper, which made his vote on any particular question utterly uncertain." We doubt whether a clue may not invariably be found to

<sup>a</sup> Thompson's *Life of the Duchess of Marlborough*.

<sup>r</sup> Mahon's *History of England*, vol. ii.

this supposed uncertainty—the rectitude of the cause which he espoused. This principle laid him open to the scoffs of Sir Robert Walpole, as libertine in public as in private morals. In a letter to Lord Townshend, in which he mentions, without any sense of shame, his opening of letters at the post-office—that mean and miserable *espionage*, which justified the frequent complaint of Pope, and his correspondents—the prime minister sneers at the public virtue of a man whose price he could not know. “I had a curiosity to open some of the letters of the Pulteneys, and find them full of great hopes upon the difficulties they promise themselves will arise from the foreign affairs, and especially from the Hanover treaty. I cannot learn they have gained a man, but righteous Sir Joseph.”<sup>s</sup>

This worthy judge, who had no occasion to refuse the sobriquet of righteous, was appointed to the Rolls upon the death of Sir John Trevor, in January 1717, and retained his post till October 1739. For twenty-two years he presided over that little court in Chancery-lane, pronouncing, night after night, those well weighed decisions which have been the land-marks of his successors—the predecessor of a mighty race, Strange, Kenyon, Arden, and (a name, than which no greater can ever be uttered in a court of equity) Sir William Grant.

To the great value of Sir Joseph Jekyll’s decisions, the legal student, who has diligently conned the reports of Peere Williams, can be no stranger. One or two of these are of sufficient general interest to bear citation. Sir Joseph allowed a legacy of £500 to be good, though both the christian and surnames of the legatee were mistaken in the will. The bequest was

<sup>s</sup> Cox’s Life of Sir R. Walpole.



to Catherine Earnley : the person's name who claimed the legacy, Gertrude Yardley, but the mistake was fully explained. The testator spoke, when he made the will, in a very low tone, and hardly intelligible ; he usually called the legatee Gatty, which the scrivener might easily mistake for Katy. He had often declared he would do well for her. As there was no person of the name of Catherine Earnley claiming the legacy, there can be no doubt that that equity was done.

We can readily fancy the delight with which Sir J. Jekyll decided that a suit in equity lies to recover back money paid on a bubble. The plaintiffs brought a bill, in the year 1723, to recover £240, paid to defendants as managers and projectors of a bubble, called "The Land Security and Oil Patent Company," issuing 8000 shares at £20 a share. The project was for extracting oil out of English radishes, for which discovery they had obtained a patent. The Master of the Rolls declared that courts of equity must decree against frauds, "they gave moonshine, instead of anything real, and must pay back to plaintiffs principal, interest, and costs!" The project had totally failed in August 1720, no oil having been made or radishes sown on the premises—some fens in Lincolnshire.

The panegyric bestowed upon his chief, Lord Hardwicke, may, with equal justice, be applied to Sir Joseph Jekyll.<sup>1</sup> He shone in those chief characteristics of a judge, temper and patience. He heard all with attention, and then decided with readiness, enforcing his decrees with such convincing reasoning, as equally gave information to the bar and satisfaction to the parties, "*Etiam quos contra statuit, æquos placatosque dimisit.*" Against this great law lord, the

<sup>1</sup> Vernon's Reports.



learned knight once tilted with his vizor up, and did battle for the rights and privileges of his peculiar court. In 1728, he published anonymously—there seemed a departure from judicial reserve in committing himself by name to print—a discourse on the judicial authorities belonging to the office of Master of the Rolls, with a preface, occasioned by a book entitled, “The Legal Judicature in Chancery stated.” It was a learned treatise, to show that the Master of the Rolls had a judicial power in the Court of Chancery inherent in his office, and that this court always had great extent of jurisdiction and multiplicity of business. “The footsteps which are extant of the jurisdiction of the Chancellor are not ancienter than those of the jurisdiction of the Master of the Rolls, for they are coëval. The right of appealing from decrees made by the Master of the Rolls to the Chancellor is very well known, and (even since the authority of the Master of the Rolls to make decrees, without two masters, hath been drawn in question), several decrees so made have, on appeal, been confirmed by the present Lord Chancellor. Yet, all courts that judge by way of appeal are bound, *ex officio*, to consider the jurisdiction of the judge or judges, in the first instance, on the legality whereof the validity of their own proceedings do depend. There is still behind an authority which has affirmed and established the jurisdiction of the Master of the Rolls, in such a manner as puts it out of the power of the Chancellor or of any others to control it. I mean the judgment of the supreme judicature of the kingdom, the House of Peers, who have, from time to time, received appeals to the Court of Chancery, not only against decrees of the Chancellor, but against decrees of the Master of the Rolls.”

The learned author becomes quite pathetic in contemplating the mischief that would ensue, were the opposite doctrine established. “Arguments *ab inconvenienti* are legal arguments, and have had so much weight given them in all ages that it is grown into a maxim, Better a mischief than an inconvenience. But if things thus established by practice should be controverted, and the foundations of jurisdiction raked into, how precarious would judgments be rendered, and how uncertain the remedies, and consequently the rights of the people!—If such allowance hath been given to usage and practice, even where the commencement of it has been shown, and that upon such just reasons, how much stronger is the argument for the judicial authority of the Master of the Rolls, since it has been proved to have been exercised by a series of acts, in such variety of instances, both ancient and modern, without any appearance when it began. If that authority should now be denied, how extensive might the consequence be, with respect to the properties of great numbers of people? What would become of the estates of those who have no other title to them, than as they hold and enjoy them under decrees made by virtue of this authority? What would become of the many purchasers, who have bought estates under such decrees? What would be the fate of those trustees, who have their indemnity for conveying estates, or paying away great sums of money, from decrees or orders made by the like authority?”

From the internal evidence of this pamphlet, it is easy to discover that the author was a better lawyer than *littérateur*. He was earnest, however, in his encouragement of learning, and the patron of

learned men. An unswerving protector to Whiston, for he was a worthy divine, with all his eccentricities, the friend of Arthur Onslow, companion of Somers, patron of Joseph Butler—who, when composing the divine Analogy, in his 26th year, received his first preferment, that of preacher at the Rolls, from the hands of Sir Joseph Jekyll<sup>a</sup>—he chose his intimates and connections well. By his interposition, one of the most valuable treatises of Sir Matthew Hale was rescued from neglect. A vote had passed the House in November, 1680, that the executors of Chief Justice Hale should be desired to print his manuscripts relating to the Crown Law, and it referred the task to a committee: but, that Parliament being soon after dissolved, the design dropped. Mr. Emlyn effected the desired object in 1736, and dedicated the work to Sir Joseph Jekyll, because to him it was that we, after all, are indebted for rescuing this valuable book from the obscurity wherein it had long lain.<sup>x</sup>

Tradition has preserved several interesting anecdotes communicated by him in society—among them one which Jekyll told Onslow, of Jeffries declaring to Dr. Scott on his death-bed, “whatever I did then, I did by express orders, and I have this further to say for myself, that I was not half bloody enough for him who sent me thither.”<sup>y</sup> The tale of Jekyll’s real and intended kindness to the true-hearted but erratic Whiston is best told in his own primitive narrative.<sup>z</sup>

“Soon after the accession of the house of Hanover to the throne, Sir Joseph Jekyll, that most excellent and upright Master of the Rolls, and sincere Christian, Dr. Clarke’s and my good friend, had such an opinion

<sup>a</sup> Life of Bp. Butler.

<sup>x</sup> Sir M. Hale’s Treatise.

<sup>y</sup> Wolryche’s Life of Lord Jeffries.

<sup>z</sup> Whiston’s Memoirs, vol. i.

of us two that we might be proper persons to be made bishops, in order to our endeavouring to amend what was amiss in the Church, and had a mind to feel my pulse, how I would relish such a proposal, if it ever should be made to me ; my answer was direct and sudden, that I could not sign the thirty-nine articles, to be made Archbishop of Canterbury. To which Sir Joseph replied, that bishops are not obliged to sign those articles. I said I never knew so much before ; but still, I added, if I was a bishop, I must oblige others to sign them, which would go sorely against the grain with me. I should endeavour to govern my diocese by the Christian rules in the apostolic constitutions, which, as they would frequently contradict the laws of the land, would certainly expose me to a *præmunire*, to the forfeiture of all my goods to the Crown, and to imprisonment as long as the king pleased, and this, concluded I, would be the end of Bishop Whiston."

This pious visionary relates that the dissenters, at a synod in 1719, rejected by 69 to 65, all unscriptural impositions of subscription ; " thus, to use the words of the late excellent Master of the Rolls, the Bible carried it by 4." His patron seems to have had a lurking kindness to dissent—to have been a decidedly low-churchman.<sup>a</sup> " I introduced Mr. Chubb into the favour and family of Sir Joseph, who allowed him an annual salary, and when I thought myself obliged to inform him afterwards, that Chubb was become a sceptic, and to caution him against procuring himself a blot, by openly supporting him, Sir Joseph was not willing to believe my representation." Poor

<sup>a</sup> Whiston's *Memoirs*, vol. ii.



Whiston would not tolerate any doxology but his own!

A spirit of over-curious speculation exposed the wife of his patron to a laughable rebuke. Lady Jekyll was one of the sisters of Lord Somers, and thinking that she must know more than any other woman, often puzzled herself and others with over-subtle questions. One day, after dinner, she said to Mr. Whiston, "A difficulty occurs to me in the Mosaic account of the creation, which perhaps you can resolve me in, and it is this: since it pleased God to create the woman out of the man, why did he form her out of the rib rather than any other part?" Whiston looked puzzled, and at length answered, "Indeed, madam, I don't know, unless it be that the rib is the most crooked part of the body." The old Master of the Rolls was highly delighted with Lady Jekyll's discomfiture, and exclaimed in ecstasy to his aged friend, the venerable clerical wag, "There, there, she would have it!"<sup>b</sup>

When a subscription was made in 1721 for the carrying on his supposed discovery of the longitude by the dipping needle, headed by George I., £100, and the Prince of Wales, £50, the Lord Chancellor gave £21, and the Master of the Rolls £31 10s. Though frugal of money, Sir Joseph was not sparing for himself. He commenced building at his own charge, the present handsome residence for the Master of the Rolls, as appurtenant to the office; and George I., surpassing the munificence of the judge, advanced for its completion £5000. On his death, which took place at his seat in Hertfordshire in the autumn of 1739, it appeared that he had left his

<sup>b</sup> Letters of Warburton.



fortune towards paying off the national debt, thus preserving his generous eccentricity to the grave. The nation, however, so little esteemed his bounty, that, when the next of kin petitioned Parliament to be allowed to administer, and to divide his estate, on the plea that this testamentary disposition was the result of dotage, Parliament at once acceded to the request.

Lord Mansfield ridiculed the notion of his old brother judge beginning to liquidate the national debt, saying he might as well have attempted to stem the Thames, under the middle arch of Westminster Bridge, with his full-bottom wig.<sup>c</sup> His endeavour to make a beginning would not have appeared so ridiculously forlorn, had a keen sense of patriotism and public spirit been more generally diffused. Peace to the manes of this just judge! The world would be better than it is, were there more such whimsicals to be found in it.

<sup>c</sup> Holiday's Life of Lord Mansfield.

## CHAPTER III.

WITH Sir Joseph Jekyll closed the proud list of distinguished lawyers, who had for the half century that succeeded the Revolution taken a leading part in the debates of the House, swaying the discussions by their eloquence, defending its privileges by their authority, and illustrating the statute-book with many proofs of legislative wisdom. In addition to this gallant corps of orators and statesmen from Westminster Hall, there were other men of the Long Robe of too great eminence in their profession to be wholly overlooked, but of whom a rapid sketch may suffice, as the celebrity which they gained in the Senate was incommensurate with their reputation at the Bar. The floor of St. Stephen's is said to be strewed with legal wrecks, but our long list of forensic debaters, not yet complete, proves that the triumphs of the Bar are at least equal to its failures and defeats.

The greatest name among the *Dii minorum gentium* is, beyond comparison, that of John Holt, who was suddenly called away, but not too soon for his own glory, after sitting for a few eventful weeks in the Convention, to preside over the Queen's Bench. This incorruptible judge was born at the little market town of Thame, in Oxfordshire, on the 30th December, 1642, eldest son of Sir Thomas Holt, Knight, a bencher

of Gray's Inn. His youth was abandoned to license in company with such reprobates, that he recognized one of them, when judge, in a prisoner convicted before him of felony. On visiting the culprit in gaol, and inquiring the fate of certain of their intimates at Oriel College, he is said to have received for answer—"Ah! my Lord! they are all hanged but myself and your Lordship."<sup>a</sup> Casting aside the sins of his youth, he applied himself with successful industry to the practice of law, and, amid sore temptation, preserved his integrity untarnished.

When the mighty change had passed over all the institutions of the land, Serjeant Holt was one of the eminent lawyers selected as legal assessors to the Lords, in the room of the Judges whose official functions had ended with the flight of their misguided sovereign, and whose character commanded no respect. He was elected for Beeralston, in the place of the veteran Serjeant Maynard, who had been returned also, and made his election to sit for Plymouth. He argued for the word "abdication," suggesting a dangerous proposition, that the Government acted under a trust, and that any acting contrary to it was a renouncing of the trust. The throne had been filled for several weeks before the Bench was new-modelled. Every Privy Councillor was directed to bring a list of twelve lawyers, whom he considered best fitted, by learning and integrity, to fill the vacant seats; and, from a comparison of these lists, the twelve judges were nominated. The first was Sir John Holt, then in his 47th year, appointed, accordingly, Chief Justice of England. In defence of the constitution, he successfully resisted both the Lords and Commons. The

<sup>a</sup> Law Magazine.

judgment on the case of the Aylesbury burgess, in which, contrary to the opinion of the three puisné judges, he asserted the rights of an elector to claim damages at law against the returning officer who refused to record his vote, was solemnly affirmed in the House of Lords, and deserves praise for its masculine and independent tone. "The Parliament cannot judge of this case, nor give damage to the plaintiff for it; they cannot make him a recompense. Let all people come in and vote fairly; it is to support one or the other party to deny any man his vote. By my consent, if such an action comes to be tried before me, I will direct the jury to make him pay well for it; it is denying him his English right, and if this action be not allowed, a man may for ever be deprived of it. It is a great privilege to choose such persons as are to bind a man's life and property by the laws they make."

Upon this noble judgment has been framed an ingenious fable, which has floated down the traditional anecdotes of the last century.<sup>b</sup> The Speaker, we are told, came in person, his serjeant having been repulsed, to summon the audacious Chief Justice, to appear at the bar of the House, to purge himself of a contempt. "Go back to your chair, Mr. Speaker," thundered Sir John Holt, "within these five minutes, or you may depend upon it I will send you to Newgate. You speak of your authority; but I tell you, that I sit here as an interpreter of the laws, and a distributer of justice, and, were the whole House of Commons in your belly, I would not stir one foot." We grieve to pronounce this honest John Bull speech a pure invention. Not a hint of such an occurrence is to be traced in any

<sup>b</sup> Grainger, *Biographia Britannica*, &c.



of the King's Bench reports—not a word of the Chief Justice is to be found in the Journals of the Commons. The scene was well imagined ; for, could the Speaker have been made to troop to the Queen's Bench—the main difficulty—the words put into the mouth of the Judge were probably those that would have been spoken.

The same independent fearlessness with which the Chief Justice had braved the displeasure of the Commons he displayed on a later occasion, in defence of the rights of his order against the encroachments of the Lords. Having allowed the Earl of Banbury, when indicted for manslaughter, to claim a trial by his peers, the Lords, who disputed his right to the peerage, summoned Sir John Holt before them, and demanded the reasons for his decision. His firm refusal and the subsequent proceedings are thus reported in Vernon's Letters.

“The House of Lords sat till near six, upon the business of my Lord Chief Justice and Judge Eyre, who kept to their point, not to inform the House, any more than they did the Committee, of the reasons for their judgment in the Earl of Banbury's case, but stood upon it that they were at liberty not to answer in a matter that he charged upon them : nobody being bound to accuse himself, or furnish an accusation to his prejudice. If the judgments they gave shewed a weakness in them, it might be a reason to the King for displacing them ; or, if they were guilty of corruption, there was another way of providing against them ; and, if their judgments were disliked, they might be reversed by writ of error. But they could not submit to be schooled and catechised for all that they delivered upon the Bench, where they

were entrusted with the execution of the laws and the dispensing of justice, and acted upon their oaths. It was once or twice moved that they should withdraw, but the question was diverted, and at last it was carried to adjourn the debate and the House till Monday. It is uncertain yet what the event will be, though it is supposed, the matter can't be carried to extremity, though my Lord Normanby and Lord Rochester would push it. All concluded, if they should be sent to the Tower, it must end the sessions too, since the House of Commons would not bear it. I writ the purport of this letter in my Lord Chief Justice's chamber, waiting for his return from Westminster Hall, to speak with him about the unlucky business that is to come on again upon Monday. He thinks himself in the right not to satisfy the Lords in the reasons for his judgments, and they expected to be treated with more deference. I understand my Lord Lonsdale was as violent against him as either Lord Rochester or Lord Normanby; he is very indifferent what resolutions they take, and thinks he has been so ill used already that he is weary of the place."

The Chief Justice retired unmolested to his court, for all respected, if they did not dread, that manly fearlessness and judicial independence of spirit, that self-assured feeling, that grasp and vigour of intellect, which none who ever sat on the Bench, unless it were Lord Thurlow, displayed with more energy, united with a steadfast political integrity to which that judge was a stranger.

His correction of libellers was prompt and dignified. Soon after the report of Cooke's trial before him, the following apology appeared in the *Gazette*\*,

\* London Gazette for 1717.

“Whereas, in page 34 of the late trial for high treason, there are inserted these words, as spoken by Chief Justice Holt : ‘There is a levying war without treason, not aiming at the death of the king ;’ which words were not spoken by the Chief Justice, nor any to that purpose, but the same are contrary to law, the publisher makes his humble submission, and promises to rectify the same.” Aylmer, the printer, made afterwards, at the Guildhall, a further submission to his lordship.

His love of truth sometimes flashed forth from the Bench in questions of startling emphasis. A person was convicted before him in 1704, as a common cheat, for pretending to be bewitched by a poor woman, and compelled to be without food for ten weeks. One of his witnesses, Dr. Hamilton, was asked by the Chief Justice, “Do you think it is possible in nature for a man to fast a fortnight?” To this the doctor could not but reply in the negative, and was then pressed with a more home inquiry :—“Can all the devils in hell help him to fast so long?” “Truly, my lord,” replied the witness, with the proper degree of medical caution, “I think not.”

February 9, 1709-10, was the last day the Chief Justice sat in court : he lingered till the 5th March, when he expired, universally honoured and deplored. His brother and heir erected over his grave, at a cost of £1500, a magnificent monument of white marble, which represents him seated in his judicial robes, under a canopy of state, with emblematical figures of Justice and Mercy on either side.

We pass on to the memorial of another celebrated lawyer, more eloquent than Holt, but not so honest.

Heneage Finch, second son of the Earl of Nottingham, whose father, Serjeant Finch, was Recorder of London, and his uncle Lord Keeper in the reign of Charles I., had a hereditary claim to reverence as a lawyer. For his eloquence he was called "the silver-tongued," as the great earl his father had been styled the English Roscius, and charged by Burnet (the reproach could not be levelled against himself) with being too eloquent on the Bench, in the House of Lords, and in common conversation. Born in 1649, a gentleman commoner of Christ Church, he was chosen solicitor-general to Charles II., January 1667, when only twenty-nine, but removed by James in April 1686. The circumstance of his being the Chancellor's son will account, still more than the gift of hereditary eloquence, for this rapid preferment. We learn from an amusing story in Roger North how general was the suspicion of undue influence.<sup>d</sup> He speaks of Lord Nottingham's son, Heneage, as a famous orator in Chancery practice, and tells of one Ambrose Philips, a sharp hand in the court, treating for the Leicestershire estate of the Duke of Buckingham, and contriving to use the name of Mr. Heneage Finch in the treaty. It was told the duke that, if he let Mr. Finch have the purchase at an easy rate, it would be taken as a respect by the Chancellor, and turn to account in his causes, of which there were not a few between his grace and his creditors. He abated £2000 of the purchase money; but, when he found out that he had been imposed upon, and that the Chancellor's son was not the real purchaser, he filed a bill to recover the additional £2000, and had a decree in his favour.

His early rank as a law officer of the Crown became

<sup>d</sup> North's Lives.



eventually a subject of regret to Mr. Finch, as it involved him in those legal prosecutions, which ensanguined the close of the reign of Charles II. In summing up the charge against Lord William Russell, he evinced, however, a courteous spirit, that set off, in graceful contrast to the fury of Jeffries and the technicalities of Sawyer, his elegant and polished oratory.\*

“As to the killing of the king, I am apt to think that was below the honour of the prisoner at the bar, but this is equal treason; if they design only to bring the king into their power till he had consented to such things as should be moved in parliament, it is equally treason, as if they had agreed directly to assassinate him. But the last objection (which I see there has been a great many persons of honour and quality called to prove,) is, that it is not likely my Lord Russell should be guilty of any thing of this kind, being a man of that honour and virtue, and so little blameable in his whole conversation. I do confess, gentlemen, this is a thing that hath weight in it. But consider, on the other hand, my Lord Russell is but a man, and hath his human frailties about him. Men fall by several temptations; some out of revenge, some by malice, fall into such offences as these are. My Lord Russell is not of that temper, and, therefore, it may be, these are not the ingredients here. But, gentlemen, there is another great and dangerous temptation that attends people in his circumstances, whether it be pride or ambition, or the cruel snare of popularity, the being cried up as a patron of liberty. This hath been a dangerous temptation to many, and many persons of virtue have fallen into it, and it is the only way to tempt persons of virtue, and the devil

\* Phillipps' State Trials, vol. ii.



knew it; for he that tempted the pattern of virtue, shewed him all the kingdoms of the world, and said, 'All these will I give thee, if thou wilt fall down and worship me!' Though he be a person of virtue, yet it does not follow, but his virtue may have some weak point in it; and I am afraid these temptations have prevailed upon my Lord."

Mr. Phillipp<sup>f</sup> characterises his speech as able and not unfair, and arrives at the sound conclusion, "that the trial of Lord Russell, defective as it undoubtedly was, and inconsistent with the practice and principles now happily established, was yet one of the least exceptionable of the state trials of that period."

In the prosecution of Algernon Sidney, Mr. Finch betrayed those arbitrary principles, subversive of all rational freedom, which had tainted the prerogative lawyers of the time. The doctrines in Sidney's written papers, which the Solicitor-General insisted on as principally manifesting the design of destroying the king, were the following, "That the king derives all his power from the people; that it is originally in the people; that the measure of subjection must be adjudged by the parliament, and if the king does fall from doing his duty, he must expect that the people will exact it, and" added the crown lawyer, "this is the more dangerous conspiracy in this man, by how much the more it is rooted in him, and how deep it is you hear, when a man shall write, as his principle, that it is lawful to depose kings if they break their trust, and that the revolt of the whole nation cannot be called rebellion."g

In the apology which Algernon Sidney left on the scaffold, he complains bitterly of his judges: "None

<sup>f</sup> State Trials, vol. ii.

<sup>g</sup> State Trials, vol. xi.

but such as they would have suffered Mr. Solicitor, by a long *painted* speech to have misrepresented the evidence on both sides, to mislead the jury, to have represented Lord Howard's frequent attestations to God that he knew of no plot, believed that there was none, and took that which was spoken of as an invention of priests only, as willingness to confess it, and his many perjuries as a mark of the truth of what he had sworn, and by such constructions as were absurd, impossible, and false, to drive them headlong into a verdict, upon no evidence, in matters of which they were utterly incapable of judging."

Notwithstanding his too ductile compliance with the behests of an arbitrary court, the young solicitor fared no better at the hands of the brutal Jeffries than his less subservient rivals at the Bar. The following scene from a celebrated trial in the reign of James II., that of Lady Ivy, shows the readiness, with which the Chief Justice acted the part of an angry pedagogue, and of the mutual discredit with which the dignity of the Bench and the independence of the Bar emerged from these forensic controversies.<sup>h</sup>

"*Solicitor-General*.—We have here the husband's, oath concerning this matter, that this woman, who now takes upon her to swear these forgeries and things, told him she could have £500, if she would swear against my Lady Ivy.

*Lord Chief Justice*. Is that evidence against the wife?

*Solicitor-General*. He is now dead it seems, but here is his oath.

*Lord Chief Justice*. Pray consider with yourself, could the husband have been a witness against the

<sup>h</sup> State Trials, vol. xii.

wife about what she told him upon an information for that offence of subornation ?

*Solicitor-General.* No, my Lord, I think not.

*Lord Chief Justice.* Could the wife be an evidence against the husband for the forgery ?

*Solicitor-General.* No, my Lord, she could not ; and yet she swears it upon him here.

*Lord Chief Justice.* That is not against him, man ! he is out of the case ; but against my Lady Ivy : and how can the oath of the husband be evidence here ?

*Solicitor-General.* Suppose, my Lord, that both husband and wife were both as evidence against my Lady Ivy, were that good ?

*Lord Chief Justice.* Certainly, that were very good.

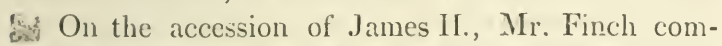
*Solicitor-General.* Why then, my Lord, one of them says, that she saw such and such things done by Lady Ivy, and by him for her ; and the other says such things were not done, but she confessed she could have £500 to swear they were done ; shall not this evidence be admitted to contradict the other ?

*Lord Chief Justice.* Why, good Lord ! gentlemen, is the philosophy of this so witty that it need be confidently urged ? Is it good logic, that, because they both were good witnesses against my Lady Ivy, therefore either of them is a good witness against the other ? Shall the husband's oath be read against the wife to fix a crime upon her ? Sure you do not intend this shall pass for argument, but to spend time.—Nay, be not angry, Mr. Solicitor, for if you be, we cannot help that neither. The law is the law for you, as well as me.

*Solicitor-General.* My Lord, I must take the rule from you now.

*Lord Chief Justice.* And so you shall, sir, from the Court, as long as I sit here, and so shall everybody else, by the grace of God! I assure you I care not whether it please or displease: we must not have our time taken up with impertinent things, for, I must say, there have been as many offered in this cause to-day as ever were in any cause that ever I heard, and, if all be not as some would have it, then they must be in a passion presently. The court gives all due respects and expects them.”

To the credit of the rough Chief Justice be it spoken, he was no respecter of persons, and gave as sound a drubbing, when the fit seized him, to a law-officer of the Crown, and silk-gownsmen, even the late Chancellor's son, as to an unknown barrister in stuff.

 On the accession of James II., Mr. Finch composed that famous speech, in which the monarch declared to his delighted council that he should always support and protect the Church of England,—a declaration which was read in the pulpits, and welcomed throughout England with rapture.<sup>1</sup> The monarch has recorded in his private memoirs, that his solicitor ‘worded the speech differently from his intention,’ but this Jesuitry may be ascribed with more fairness to the utterer, than to the composer, of the royal promise.<sup>k</sup>

From the soft, insinuating manners and ductile temperament of Mr. Finch, he was first selected to test the experiment of James's dispensing power.<sup>1</sup> He was asked in private by the Chancellor, whether the king might not, by his royal grant, appoint officers

<sup>1</sup> Wallace's History of England.    <sup>k</sup> Clarke's Life of James II.

<sup>1</sup> Ellis' Letters.



unqualified, notwithstanding the laws which imposed tests; and he gave a decided negative. "The Solicitor was first tried," says North, "and he refused plump:" the next day he was discharged, to make room for a more unscrupulous Solicitor, and became an eloquent advocate of the impeached bishops. Returned by Oxford University to the Convention Parliament, as the sister University elected Sawyer, he argued with persuasive eloquence in favour of a regency, or, in Hawles' invidious phrase, *twittered* out (for his voice was low and feeble, though sweet) a denial that the king had lost his title to the crown, or forfeited his inheritance.

Colonel Birch acknowledged the disadvantage of those who had to contend against him, from the force of his arguments and the smoothness of his discourse.<sup>m</sup> The very Abdiel of debate, he could, however, make no impression on an adverse party, who looked upon him as the shedder of innocent blood. When the bill for reversing Lord Russell's attainder had been sent down from the Lords, and read a first time, his sensitiveness was too great to suffer him to remain uneasily silent. "I see," he cried, "many gentlemen's eyes are upon me, therefore I stand up to give an account of my reasons for the part I acted in that unfortunate business, that may more immediately concern me." Proceeding to state authorities for his position that, to raise war against the king is treason by the statute of Edward, he was thrice called to order, a discussion not being then allowed on the first reading of a bill. The strict rule might have been dispensed with on such a particular occasion, to hear

<sup>m</sup> Parliamentary History, vol. v.

their member's vindication ; but the House were inexorable. Grey's profile of the Debates shews what an intense spirit of indignation prevailed. " Sir Henry Goodrick said, ' It is strange to me to hear that learned gentleman vindicate himself, when nobody accuses him, and thereby to arraign the justice of the bill for repealing the barbarity of this attainder by this murder. This is not to be suffered.'

" The Speaker.—' The learned gentleman, from his own vindication in the part he acted relating to this noble lord, has let himself into law books, against the orders of the House.'

" Sir Robert Howard.—' I cannot name Lord Russell without disorder : I would neglect all things to read this bill a second time. Perhaps the learned gentleman may tell us how large the law is then ; it is a sufficient thing to name that noble lord ; I am not able to say any more, but pray read the bill.'

" Sir Thomas Lee —' This bill declares that the law books the learned gentleman has quoted were wrong, and, if he doubts it, the reading it a second time will set that part right.'

" The bill was read a second time."

It was with extreme difficulty that the friends of his noble house could save the baited Solicitor of James from the ignominy of expulsion. When this ban had passed upon Sawyer, after a long debate, the reporter adds : " It was said privately, that all this fencing was not to save Sawyer, but Finch."

Though shielded from punishment, he found the weight of obloquy too oppressive to permit his taking freely an active part in the debates, and, after some abortive struggles, the eloquent representative of Oxford, the best fitted by nature and art among all his

competitors at the Bar to sway that deliberative assembly, was reduced to the condition of a mute ; and who can doubt the justice of the retribution ? From infirm health and consciousness of odium, his enforced silence and infrequency of attendance became habitual. In the election of 1695, the University selected a more diligent burgess, but relented in the next parliament. “ Finch,” writes Secretary Vernon, in 1698, “ is too ill to attend the House, but took it ill that he was left out last time.” On the accession of Queen Anne he was created Lord Guernsey ; but, so powerful was his brother’s influence and so convenient his own politics, when the house of Hanover came to the throne he was made Earl of Aylesford and Chancellor of the Duchy of Lancaster. There seemed nothing wanting but the restoration of the Stuarts to have advanced him another step in the peerage. This temporising earl died in July, 1719.

Macky’s *Compendium* is better than a lapidary’s inscription :—“ Lord Guernsey, accounted one of the greatest orators in England, a tall, thin, black man, splenetic.”

It is curious to read the prejudiced notice which Roger North has left of his celebrated contemporary at the Bar, Mr. Pollexfen.<sup>n</sup> “ Henry Pollexfen was deep in all the desperate designs against the Crown. He was the adviser and advocate of all those who were afterwards found traitors. In a word, a thorough-stitch enemy to the Crown and monarchy of his time ; a fanatic and (in the country) frequenter of conventicles. When Jeffries went down into the West with his commission of war, he took Pollexfen as King’s Counsel in those furious prosecutions. At the

<sup>n</sup> North’s *Lord Guildford*.

Revolution, he was made a judge, and, from a whiner for favour to criminals, he proved the veriest butcher of a judge that hath been known." Who could have supposed that this was an honest and learned lawyer in reality, the faithful counsellor, who advised Lord Danby to plead his pardon, who was summoned to the Lords at their deliberations when they could not trust the judges, an upright, plodding man, but somewhat confused and puzzle-pated. He recommended the Prince of Orange, on his arrival in London, to declare himself king after the manner of Henry VII.;<sup>o</sup> but this strange outbreak of a professed whig was crushed by the good sense of the prince, and his just alarm that a direct assertion of the right of conquest would not be without danger.<sup>p</sup>

The caricature in North's Anecdotes of another legal worthy, Sir George Treby, is, if possible, more monstrous. "He succeeded Jeffries in his recorder-ship, was no fanatic, but to the fanatic party true as steel. His genius lay to free-thinking, and, conformably to his fellows at that time, made the Scriptures and Christianity, or rather all religion, a jest." Evelyn writes a more just character: "He was a learned man in his profession, of which we have now few, never fewer."<sup>q</sup> Sir George Treby was concerned, with enduring credit to his reputation, in the great case of monopolies, "*Sandys v. The East India Company*," supporting the right of a private trader to carry on commercial intercourse with the East Indies, notwithstanding the exclusive privilege of trading granted by the letters patent of Charles II. to the company. Serjeant Holt argued, in support of the monopoly, that the king's subjects had no

<sup>o</sup> Speaker Onslow.<sup>p</sup> Wallace.<sup>q</sup> Evelyn's Memoirs.



legal right to hold intercourse of any kind with infidels without express license from the Crown; for which he adduced the expression of Lord Coke, in Calvin's case, that infidels were perpetual enemies, and cited scriptural authority: "We read how the children of Israel were perverted from their religion by converse with the nations round about them, in the book of Judges." "I confess," replied Sir George Treby, "I did a little wonder to hear merchandizing in the East Indies objected against as an unlawful trade, and did not expect so much divinity in the argument. I must take leave to say, that this notion of Christians not to have commerce with infidels is a conceit absurd, monkish, fantastic, and fanatical." Restored to his office of Recorder by William III. in 1688, he was appointed Attorney-general in 1689, and Chief Justice of the Common Pleas in 1692. He died in 1701.

For the following compendious notice of another celebrated whig lawyer, we are indebted to Anthony Wood.<sup>r</sup> "Sir John Trenchard was born of puritanical parents; member for Taunton 1679; busy against papists and prerogative; concerned in Monmouth's rebellion; included in James's act of oblivion, but ungrateful, and opposed to him the rest of his reign; made by King William, for whom he appeared openly, Chief Justice of Chester, in May 1688, and Secretary of State, 1693; died April 1695, æt. 45. A man of turbulent and aspiring spirit, never satisfied. An astrologer told him formerly that he should such a year be imprisoned, such a year like to be hanged, such a year be promoted to a great place in the law, such a year rise higher, and such a year die;

<sup>r</sup> Athenæ Oxonienses.

which all came to pass, as he told Dr. Gibbons on his death-bed"—Credat Judæus Apella !

Sir John Hawles, a great favourite of King William, and one that deserved his favour ; a better writer than speaker ; was born in the Close at Salisbury ; educated at Queen's College, Oxford, and a person of note in his profession ; " but," adds spiteful Anthony, who could not endure a Williamite, " ill-natured, turbulent, and inclining to a republic."<sup>s</sup> He wrote in March 1688-9, " Remarks on the Trials of Lord Russell, Sydney, Cornish," &c., by way of reflection on the injustice, as he thought, of certain judges and other persons, in the latter end of the reign of King Charles II. and the beginning of James—a right honest and valuable work. His notes on the trials reflect the highest credit upon Sir John, both as a lawyer and a man. He may be intemperate and abusive in parts, but who could or ought to write with calm moderation, when the blood of the murdered Sydney was yet fresh upon the ground ; when that judge without mercy, and gentleman without manners, Sir Francis Wythens, was yet living in shameless impunity ; when Titus Oates was anew a pensioned favourite ; and the legal murders of Cornish, and Lisle, and Gaunt, found still apologists and defenders ! The homely pathos, with which Hawles dilates on the iniquities practised against Cornish, speaks to the heart.

" How often was he snubbed and bid hold his tongue ! How often did he beg the patience of the Court, to hear him and his witnesses ! And, when he was heard, how was all he said ridiculed ; and, if he said he was innocent, he was bid remember, my Lord Russell said so to his death ; when he said he was as

<sup>s</sup> Wood's *Athenæ Oxonienses*.

innocent as any person in the court, he was told, for all his confidence few believed him. If he said the matter sworn against him was improbable, (which hath been taken for a pretty good topic for the disbelief of a matter testified,) how is it ridiculed by improbability! improbability! improbability! If he go to prove he is an honest man, he is told that is all appearance. If he says he employed Goodenough about the riot, he is told that is a branch of the plot; if he called one to prove he received the sacrament, he is told that was in order to qualify himself to be a sheriff. No account can be given for the proceedings against Mr. Cornish in the above manner, but that some of the judges, whereof three were on the Bench, had newly come out of the West, where they had been so flushed and hardened, that nothing seemed to them rigorous or cruel."

We forget, when reading this and other eloquent effusions of a just and humane spirit, that the author was that "mumbling Solicitor-General," whom the Lords would scarcely permit to sum up an impeachment, as they could not hear what he said. His legal performances in the closet atone for his imperfections in Court and the Senate; for, while posterity have confirmed his condemnation of those cruel trials, which are a lasting disgrace to our judicature, he has the merit of being the first who laid bare their iniquity, and exposed them in print.

A few more disjointed anecdotes contain all the information worthy of notice of the remaining lawyers in Parliament, "whose names have sufficient buoyancy to float down the stream of time." Among these was Serjeant Pengelly, less successful in the House of Commons than in Chancery, where, for some years, he

led against the future Lord Hardwicke, till driven from his profession by over-sensitiveness. The then Chancellor, Lord Macclesfield, had the great fault of favouritism, and was in the habit of repeating, at the close of the Serjeant's arguments, that what Mr. Yorke had said had not been answered. The poor Serjeant, annoyed beyond endurance at this daily provocation, for the petted rival was young enough to be his son, one morning threw down his brief in a rage, and wended his way for ever from the Hall, exclaiming, "he would no more attend a court where he found Mr. Yorke was not to be answered."<sup>t</sup>

He had afterwards an opportunity to feed his grudge against the partial Lord Macclesfield, by taking up to the House of Lords articles of impeachment against him, and prosecuting them to judgment. In his character of counsel to the Duke of Newcastle, the Lord Chamberlain, he gave great umbrage to Steele, by advising the Duke, that he had power to cancel his license as governor of the Company of Comedians. Sir Richard, in his vexation, wrote to his grace, that he, "who advises how to escape the law and to do injustice to his fellow-subject, is an agent of hell. Such a man, for a larger fee, would lend a dark lantern to a murderer! I hope he is poor, by selling poison to get himself food." With a quaint revenge, the witty licenser thus dissects the name of his oppressor: "Pen is the Welch word for head, Guelt the Dutch word for money, which with the English word Ly, express one who turns his head to lye for money :"<sup>u</sup> Sir Thomas Pengelly survived this curious anagram, and became Chief Baron of the Exchequer.

<sup>t</sup> Bentham's Recollections of Lord Hardwicke.

<sup>u</sup> Steele's Letters, by Nicholls.



Among the silent occupants of the tory benches was the famous Roger North, so often cited, whose histories give as false a reflection of all opposed to him in politics as those fantastical mirrors, which, from a flaw in the glass, caused the wigs and head-dress of all who ventured to take a peep in them to look as if they sat awry. In his lives of the three brothers North, the Lord Keeper Guildford, the merchant, and the divine, he has committed all imaginable sins of composition: his diction is bald and vulgar—his sentiments low—his portraits of men and manners bitterly prejudiced and partial; yet is there so much anecdote diffused through the whole narrative, about persons of whom we love to obtain information, so much amusing gossip, such minute details of interesting matter, that his biography must always attract an hour of leisure, and stamp its author the Boswell of the 17th century. Sciolist in philosophy, he was, we fear, though dignified with the honour of King's Counsel, not too conversant with law. The second Lord Clarendon says, indeed, in his Diary, "that the only honest lawyers he had met with were Roger North and Sir Charles Porter,"\* both like himself, thorough jacobites. The last was afterwards Lord Chancellor of Ireland, with a reputation as slippery as his fortunes; and of the first it must be confessed that, if candour and veracity make any part of honesty, he had but an indifferent claim to the distinction.

Reserving our memoir of Sir Thomas Parker (Lord Macclesfield) till we come to the history of his impeachment, there is but one lawyer more of eminence in the parliament of Queen Anne and George I., who claims to be remembered: Sir Robert Raymond,

\* Diary of Henry, second Lord Clarendon.

Attorney-general in 1712, but preferred by Harley irrespective of politics. Inheriting the legal talents of his father, a judge of the King's Bench, and like him, contributing to the profession a valuable volume of reports; he was, with general assent, appointed Lord Chief Justice, and called up to the House of Peers. He is the first judge who laid down the excellent principle on Woolaston's trial, under which blasphemous libels have been since chastised, "that Christianity was part and parcel of the law of England."<sup>w</sup> Judicious lawyer as he was, he displayed a remarkable instance of narrow-mindedness on a memorable occasion. When a bill was introduced into the House of Lords for passing all statutes in the English language, Lord Raymond alone opposed this tardy measure of common sense, saying that, "if the bill passed, the law must likewise be translated into Welch, as very many in Wales understood not English." The Duke of Argyle retorted well, "that our prayers were in our native tongue that they might be intelligible, and why should not the laws, wherein our lives and properties are concerned? He was glad to see that the learned Lord, perhaps as wise and learned as any that ever sat in that House, had nothing more to offer against the bill than a joke!"<sup>x</sup>

His clinging to such an absurd prejudice in favour of a dead over a living language, forms a remarkable proof how prone lawyers are to cherish the very corruptions of prescriptive usage, to love the ruin for its ivy, and to venerate the coin for its rust.

<sup>w</sup> Lord Raymond's Reports.    <sup>x</sup> Parliamentary History, vol. viii.

## CHAPTER IV.

---

WE have now placed under review the lives of the Speakers, the first commoners of England, at whose request those perennial privileges of the House of Commons, their perfect freedom of person and of speech, are each new Parliament recorded. We have, even at the risk of diffuseness, examined the character and fortunes of the great lawyers who vindicated those privileges, and made their clientship immortal. The privileges themselves have been traced from the first dim outline to their full development, and the time-worn oppressive claims of immunity explored, the shadow of whose burdens has long since passed away. But there remains a large field of disquisition, full of historical interest, and well repaying the most curious research—the summary and arbitrary coercive power claimed and abused by this high tribunal over their own body and over strangers; those vindictive privileges, some of which are essential to the plenary power of the grand inquest of the nation, bound to enquire into abuses and to accuse offenders, though defaced with caprice and favour and tyranny, and other manifest usurpations over the authority of the executive and the freedom of the subject. “Poor and impotent, indeed,” said Lord Ellenborough,<sup>a</sup> “would

<sup>a</sup> Case of *Burdett v. Abbott*, 14 East.

be the privileges of Parliament, if they could not protect themselves against all injuries and affronts offered to the aggregate body, which might prevent or impede the full and effectual exercise of their parliamentary functions."

In this department of both Houses of Parliament, as in some great armoury, are contained all the weapons of senatorial vengeance, a few rusting in the sheath, but the greater portion glittering and apt for use—their right to punish for contempt, in the nature of attachment summarily and without appeal; to commit to the custody of the Serjeant, to the Gatehouse, to Newgate, or the Tower, all who obstruct or condemn their functions; by hostile votes and resolutions to strike down offenders against the common weal; to burn the books they may condemn, and to coerce the authors; to let slip the law-officers of the Crown; to impeach great delinquents, to attain their name and blood, to determine the crime, and, by a retrospective cruelty, to punish the criminal. In reviewing the exercise of these undefinable, uncontrollable privileges over the people at large, a calm-judging lover of our constitution will find much to regret, and no little to condemn: Even when we contemplate their undoubted power over those of their own community, and examine their punishments of offending members of their own body, we shall too often miss the principles of equity and moderation interwoven with our common law, but an utter disregard of which popular assemblies, when inflamed by prejudice or passion, are ever apt to betray.

The power of punishment, as it were, for contempt is naturally applicable to offences against established order, committed by any of themselves. In the earliest



authoritative record that is extant of their daily proceedings, the Commons' Journal of the first Parliament of Edward VI., we find, on 21st January, 1547-8, a short entry of an order, that John Storie, one of the burgesses, shall be committed to the custody of the Serjeant. Articles of accusation were afterwards read, and Storie was committed to the Tower, where he lay till the 2nd March. He afterwards suffered death for treason under Elizabeth, and appears to have been of such ungovernable temper as to have fallen a second time under the censure of the House for disrespect to the Speaker. The right of the House to punish its own members for indecent abuse of the liberty of speech may be deemed a consequence of the King's concession of that liberty; and its right to maintain order in debate is plainly incident to the privilege of debating at all.

The Speaker, being invested with full authority to preserve decorum, is expected by the House to take notice of any individual acting disorderly, and, should he persist in his contumely, to name the refractory burgess.<sup>b</sup>

On the 23rd January 1693, it was "resolved, to the end that all the debates should be grave and orderly, as becomes so great an assembly, and that all interruptions should be prevented, that no member of this House do presume to make any noise or disturbance while any member shall be orderly debating, or whilst any bill, order, or other matter shall be in reading or opening; and, in case of such noise or disturbance, that Mr. Speaker do call upon the member by name making such disturbance, and that every such person shall thereby incur the displeasure and censure of the

<sup>b</sup> Hatsell, Tit. Speaker.

House." This naming by the Speaker occurs in early times, when a member trespassed on the license of debate. Mr. Glascock, in the reign of Queen Elizabeth, having inveighed against the inferior sort of justices, then nicknamed basket-justices, and, when called upon to explain himself, having aggravated his offence by saying, "These are more like the wise men of Chaldee, that could never give judgment till they saw the entrails of beasts; our statutes penal are like the beast born in the morning, at his full growth at noon, and dead at night; so these statutes, by the end of the year, are carried dead in a basket to the justices' house"—the Speaker, Sir John Croke, throwing his mantle over the calumniated magistracy, interposed, calling on the slanderous member by name, "Mr. Glascock, you speak from the matter and purpose, and this that you have spoken you must justify."<sup>c</sup> There must, however, have been much truth in his strictures, not unpleasant to the puritan spirit that began to prevail; for when Sir Robert Wroth moved that Mr. Glascock should answer for his petulance at the bar, all said, "No, no," the reproof by their head being probably considered sufficient punishment for the offence.

When Mr. Lenthall, son of the late Speaker, at the first sitting of parliament after the Restoration, declared, in the fervour of his new-born loyalty, that those who had levied war against the late king were as blameable as those who cut off his head, he received by name a reprimand from the Chair, which the folly and dangerous consequence of his assertion well deserved.

The indomitable Prynne was twice censured in his

<sup>c</sup> Townsend's Proceedings in Parliament.

place by the Speaker ; once, for obtaining the draft of a bill which had been laid on the table, and thus tampering with the records ; and, the second time, for publishing a pamphlet against the Corporation Act, for which offence, contrary to the known resolutions of the House, even his haughty spirit, quailing before the dread of further punishment, stooped to apologize.<sup>d</sup>

There is a story current of the Speaker, Arthur Onslow,<sup>e</sup> who, in his anxiety to tighten the lax bands of discipline, used to fulminate in deepest baritone the threat of naming the disorderly member, "Order, sir, I will name you presently, order, order ; I will name you ;" that he was one day asked by an inquisitive rebel to his authority, using the privilege of a very young member, what would actually be the consequence, if the Speaker should name him. The Speaker, after a grave pause, replied solemnly, "The Lord in heaven only knows !" But this answer must have been made in a spirit of pompous waggyery, or a resolution not to relieve the mysterious terrors of ignorance ; for he well knew the penalty, that the member thus called upon by name would have to withdraw, and, even should the most lenient view of his case be taken, to be committed to the custody of the Serjeant. Thus, on the 15th of December, 1692, Mr. [Speaker, in obedience to the order, called upon a member by name, who was immediately directed to withdraw, and afterwards reprimanded.<sup>f</sup>

From the forbearance of the different Speakers, and their natural reluctance, except on extreme pro-

<sup>d</sup> Parliamentary History, vol. iv.

<sup>e</sup> Hatsell.

<sup>f</sup> Journals, vol. xi.

vocation, to name a member and thus compel this severe penalty, the instances of its exercise have been comparatively rare. But there are sufficient instances to prove that the power is not in abeyance or obsolete. When, on a later occasion, Mr. Fuller, the member for Southampton, entered the House in a state of inebriety, and too audibly mistook the Speaker for an owl in an ivy-bush, he was at once named, and handed over to the Serjeant. The next day, the Speaker, Charles Abbott, administered to the culprit a severe but dignified rebuke.<sup>g</sup> His successor, Manners Sutton, also named Mr. Otway Cave, when obstinately refusing to explain or apologize for the use of unparliamentary language, though repeatedly called upon to do so.<sup>h</sup>

The further punishment, which the House, of necessity, retains in its own hands, is the ordering any member who may incur their displeasure to the custody of the Serjeant, and, should the offence be grave enough to require it, to the Tower. This power was at first exercised with some degree of caution and forbearance. In 1601, Mr. Francis Bacon said, "I have been a member of the House these seven parliaments, and yet never knew of above two that were committed to the Tower."<sup>i</sup> The first was Arthur Hill, for saying, "The Lower House was a new person in the Trinity;" as these words tended to the derogation of the state of this House, and gave absolute power to the other, he was imprisoned. The other was Parry, that, for a seditious and contemptuous speech made

<sup>g</sup> Parliamentary Debates for 1809.

<sup>h</sup> Parliamentary Debates for 1830.

<sup>i</sup> Petyt's Miscellanea.



“even there” (the orator pointed to the place where the privy councillors sat), was likewise committed.

But this forbearance could not last long, in an assembly swayed by party virulence, and impelled by a tyrant majority, to whom the remark of a Latin historian<sup>j</sup> is too frequently applicable : *major pars, ut plerumque fit, meliorem vicit*. Their sentences were often marked by grievous partiality, and productive of intolerable hardship. With such rampant despotism was the power abused by the Long Parliament, that eleven presbyterian members were voted to the Tower in one day. Sir Edward Bainton, a member, for saying, beyond the walls of St. Stephen’s, that “Mr. Pym had betrayed his country,” was sent to the Tower, there to remain a prisoner during the pleasure of the House ! The rage of persecuting brother-members appears to have been softened at the Restoration, when the good-tempered king requested, as a personal favour, that they would resume their old English habits of good-temper and good-humour.

When Sir James Fagg was sent to the Tower, in 1675, for transgressing the orders of the House, a member suggested that he was the first member who had incurred such a sentence for fourteen years.<sup>k</sup> But, as the times grew more critical and the debates more exasperating, the temptation of removing an obnoxious antagonist, and stifling the expression of unpleasant truth, became too strong to be resisted. It has been shewn in the first volume with what frequency and caprice, on the slightest provocation, for a passing remark obnoxious to the majority, on any trivial pretext of outraging the king’s person or government,

<sup>j</sup> Livy.

<sup>k</sup> Gray’s Debates.

the orator of the weaker party was consigned to the peculiar prison of the House.

This penalty was sometimes inflicted on members for other offences than those of speech. In 1689, Captain Churchill was committed to the Tower for requiring and receiving money for convoys. He had refused to take some merchant ships under the protection of his man-of-war, without receiving a present of £200; and his punishment was made a party question; Admiral Russell and Mr. Smith, urging that he was zealous and hearty for the government, and hoping "that an ounce of misdemeanor would not weigh down a pound of merit."<sup>1</sup> Sir Edward Seymour on the contrary advocated extreme rigour: "It is said he is a gentleman of merit, but no man of the fleet can come before you, but as much may be said for him. But who would not for £200 have a reprimand here, and go do the same thing again!" Send him to the Tower, and declare him not capable to serve at sea again." This doctrine of loose morality and summary vengeance prevailed, and Captain Churchill was remanded to a short term of imprisonment, ingenuously confessing that he would rather fight three battles with the French than one with the House of Commons.

This precedent was followed in February, 1693, when Lord Falkland, for begging and receiving £2000 from King William, contrary to the ordinary method of issuing and bestowing the King's money, was voted guilty of a high misdemeanor and breach of trust, and committed to the Tower during the pleasure of the House.<sup>m</sup> He remained there two days, and was then on petition discharged.

<sup>1</sup> Parliamentary History, vol. v.

<sup>m</sup> Journals, vol. xi.

In the inquiry against the Duke of Leeds, Sir Thomas Cooke, having refused to give an account how a large sum of money belonging to the East India Company had been distributed, was committed to the Tower, and a bill introduced to compel him to state to whom he paid the money, but rendered unnecessary by a reluctant confession.<sup>n</sup> Knight and Duncombe, two members, for not giving satisfactory explanation of the false indorsement of exchequer bills (as in truth they could not) were voted to the Tower, and afterwards expelled.

Imprisonment in the Tower was frequently adjudged as a previous penalty to expulsion, when the vengeance of the House could not be satisfied by shaking off the guilty member, and sometimes inflicted as a separate penalty, when a few days' incarceration seemed inadequate to the offence. The burden of the cost must have been considered heavier than the duress. The second Lord Clarendon, in his Diary, the day after his commitment to the Tower, makes a memorandum of the grievous expense: "Mr. Dod brought me a note of the fees, which came to £120, viz: the Governor, £100; Gentleman Porter, £20; Gentleman Gaoler £10."<sup>o</sup>

In lieu of the Tower, a temporary dismissal, similar to a rustication at Oxford, was sometimes attempted to cure the vagaries of an offending but not incorrigible member. Exercised now and then under the Tudors, in the case of Wentworth and other free-spoken burgesses, it was revived in the Pensioner Parliament, when they suspended Alderman Love, for not having taken the sacrament. This zealous dissenter soon conquered his scruples, and became active in the

<sup>n</sup> Journals, vol. xi.

<sup>o</sup> Diary of Henry Lord Clarendon.

vanguard of the opposition. But this mode of redress was comparatively rare and infrequent. A far more favourite remedy was that sharp corrosive vote by which they cut away at once the proud flesh,<sup>o</sup>—the sentence of expulsion. This is the extreme act of power by which the Senate declare that a man has no right to sit among them, who will not submit to their authority, or whose fair fame is so tainted as to disqualify him for the company of gentlemen. It is a painful and odious but necessary part of the Commons' judicature, not only for offences into which the House has itself inquired, but for certain situations into which the laws of the country have placed members both with regard to their fitness and ability to attend their duties in parliament.<sup>p</sup>

There should be a power in the House to regulate their own assembly, to pronounce a collective opinion whether any particular member is fit to continue among them. The only safeguard that this power may not be abused consists in the good sense and good feeling of the majority and the force of public opinion. For the due maintenance of order and the preservation of their dignity, the House ought to keep within their own control and discipline every thing that can relate to their own members, free from the sovereign's influence, free from the interposition of the House of Lords, and independent of the courts of common law. The House has an undoubted right, in the jurisdiction over its members, to try the cause—to stand in the place of a jury, to find the fact—to declare, and, in the act of expulsion, to execute its judgment.

<sup>o</sup> Burke's Speeches.      <sup>p</sup> Sir H. Cavendish's Debates.



The quality of the crime upon which the House expels is not definite and precise, but absolute and discretionary. The principle of unfitness cannot be particularly assigned, nor the species or degree of delinquency on which they will in all cases expel, nor the mode of proceeding upon it, nor the evidence upon which it is established.<sup>a</sup> An arbitrary discretion leads, legality follows, for such is the law of parliament.<sup>r</sup> The extreme danger of this law has been forcibly pointed out ; that it marks an easy and effectual plan to exclude from the House by an unjust vote once passed, any member of it who should be obnoxious to the rage of an unscrupulous majority, or to the wantonness of absolute power. Opponents of this privilege contend that the most eminent and best deserving members of the State may, by one arbitrary and discretionary vote of a single house of parliament, (the worst species of ostracism,) be excluded from the public councils. But, excepting in periods of confusion, and wild epidemics of popular fury—the Long Parliament, the<sup>r</sup> Popish Plot, for instance—these dangers are exaggerated and fanciful.

That the Commons are bound to be peculiarly cautious in the exercise of these unlimited powers, as they control the rights of the constituents, their judgment affecting not only the privileges of their own members, but the franchises of those who sent them thither as their representatives, is a truth, like the freedom of the press, admitted by all ; it is the propriety of the excepted case alone that comes in question. “ The House has no discretionary power,” says George Grenville, in the celebrated discussion on the expulsion

<sup>a</sup> Sir H. Cavendish's Debates on the Expulsion of Wilkes.

<sup>r</sup> Dr. Johnson's “ False Alarm.”

of Wilkes,<sup>s</sup> “ of excluding all those whom it thinks improper : it is invested with no such general authority, nor is there a single precedent where we have pretended to exercise it. Whenever this House has expelled any member, it has invariably assigned some specific offence as the reason for such expulsion. By the fundamental principle of this constitution, the right of judging upon the general propriety or unfitness of their representatives is entrusted with the electors, and, when chosen, the House can only exclude or expel them for some disability established by the law of the land, or for some specific offence alleged and proved. If it were otherwise, we should in fact elect ourselves, instead of being chosen by our respective constituents. We are now acting in our judicial capacity, and are therefore to found the judgment which we are to give, not upon our wishes and inclinations, not upon our private belief or arbitrary opinions, but upon specific facts alleged and proved, according to the established rules and course of our proceedings. When we are to act as judges, we are not to assume the characters of legislators. If we depart from this principle, and allow to ourselves a latitude of judging in questions of this nature—if we are to admit those whom we think most proper, and to expel those whom we think most improper—to what lengths will not this doctrine carry us ? There never was a parliament chosen, into which there were not some persons elected, whom the greater part of the House thought unworthy of that honour. This would indeed be the sure means of purging the House effectually from all ill humours within these walls, and

<sup>s</sup> Cavendish's Debates.

of dispersing them at the same time through every corner of the kingdom.”

Such warnings of possible abuse show with what caution and reserve this power ought to be exercised, though they may fail in convincing the reader that it can be safely dispensed with altogether. But the history of the manner in which this privilege was formerly perverted proves that an obnoxious member, however cautious, could not escape its pitfalls, which at all times craved the most wary-walking. The earliest expulsion we read of, for personal causes, occurred in the reign of Henry VII., when one Terrill, for telling the king of the measures then under discussion in the House, was sent to the Tower, and by an Act of Parliament disabled (the disability extending to all his posterity) from ever serving again as a member.<sup>t</sup> In the first year of Queen Mary, Dr. Nowel, Prebendary of Westminster, being returned for Loo, in Cornwall, was, after a search into precedents, expelled, for the just reason that, as he was represented in Convocation, he ought not also to have a voice among the Commons.

An injurious precedent of expelling, for whatever the House might be pleased to term a libel, appears to have been set in 1580, when Mr. Norton complained of a book “not only as reproaching some particularly good members, but also very much slanderous, and derogatory to the general authority, power, and state of this House, and prejudicial to the validity of its proceedings in making and establishing of laws.” The author charged some members with drunkenness, “as being accompanied in their councils with Bacchus, and then also with choler, as those who had never

<sup>t</sup> Petyt's *Miscellanea Parliamentaria*.

sailed to Anticyra, and had declared the proceedings of this House to be ‘opera tenebrarum.’” The unlucky writer was found guilty of practising to deface the credit of the representative body, and its members came to a unanimous resolution, after a committee of inquiry, that Mr. Hall was the procurer that the libellous book should be printed and published—that he should be committed to the prison of the Tower, as the prison proper to the House; that he should remain in the said prison for six months, and until he should make a retractation of the book to the satisfaction of the House; that he should pay a fine to the Queen of 500 marks, and that he should be presently severed and cut off from being a member any more during the continuance of this present parliament! That part of the sentence which imposed imprisonment for a definite period and a fine was clearly illegal.<sup>u</sup> Mr. Hatsell suspects that there must have been some private history in this affair, some particular offence against the Queen, with which we are not acquainted; <sup>x</sup> but appears to have forgotten that this was the second occasion of umbrage which this stubborn gentleman had given; and, so determined was he, that, on two subsequent occasions, fresh resolutions of censure were called forth against him. From whatever motive proceeding, the whole judgment is exceedingly discreditable to the tribunal that gave it. The pamphlet, in addition to the quaint passage just cited, merely treats of the modern growth of parliaments, with some censures on the modes of conducting business there, and advice of honesty and independence, written in a

<sup>u</sup> Hatsell, Tit. Privilege.

<sup>x</sup> Hallam refutes this notion. Constitutional History, vol. ii.



style of pedantic simplicity, and abounding in allusions to ancient Greek and Roman histories.

This case is the only instance in the Journals (it would be well if there were none), before the Long Parliament in 1640, in which the House of Commons proceeded judicially on complaint against any person for printing and publishing matters derogatory from what they deemed their honour and privileges. The House, having once tasted blood, became eager in its thirst for punishment. Mr. Dale was threatened to be sequestered for plucking a member by the sleeve, to stay him from going forth in a division, Secretary Cecil gravely remarking, "This I wish may be inflicted on him, that he whose voice may be drawn either forwards or backwards by the sleeve, like a dog in a string, may be no more of this House."<sup>y</sup> To please the bonnie King James, a rough Buckinghamshire knight, Sir Charles Piggot, was sent to the Tower, and dismissed from his place of knight of the shire, for using many words of scandal and obloquy against the Scots. Adverse to the proposed union, with a pure John Bull feeling, he exclaimed, "Let us not join murderous thieves and the roguish Scots with the well-deserving Scots. As much difference between them as between a judge and a thief! They have not suffered above two kings to die in their beds these two hundred years."<sup>z</sup> Instead of noticing the knight's historical invective at the time, his brother members sat lost in mute amazement, according to their apology to the king, and only bethought themselves of punishment three days afterwards, on a royal message taxing them with neglect.

<sup>y</sup> Sir S. D'Ewes.

<sup>z</sup> Parliamentary History, vol. ii.

In the exuberance of puritan zeal, they removed from the service of the House, as too unworthy, Mr. Shepherd, one of the burgesses for Shaftesbury, who ventured to utter some poor but harmless jokes against the second reading of an act for the keeping of the Sabbath, otherwise called Sunday. "The title is wrong," quoth the anti-puritan. "Every one knoweth that dies Sabbati is Latin for the Sabbath-day, and dies Sabbati is Saturday, as it is taken in all writs, returns, and amongst lawyers. It is no otherwise than if it should be titled 'An Act for the observing of Saturday, otherwise called Sunday.' The body is no better than the head. This is an act made in despite of the face and teeth of the King's book, which allows of dancing on the Sundays, and King David says, 'Let us praise God in a dance.'"

The modern cry of "Oh! oh!" would surely have been sufficient chastisement for this *mauvaise plaisanterie*; but the pious Mr. Pym thought that such profaneness, comparing the dancing about Maypoles, which was forbidden by the statute, to the dancing before the ark, ought to be visited with the further infliction of imprisonment and £100 fine. It peeped out in the debate that Mr. Shepherd had given dire umbrage, by saying, "We made guns, engines, and barricades against papists, and not so much as a mouse-trap against a puritan!"

The House had better warrant for dismembering, in the same reign, Sir Giles Mompesson, (the Sir Giles Overreach of Massinger,) for extortion, and Sir J. Bennet, the judge of the Prerogative Court, and member for the university of Oxford, for 'an itching palm.' Unless cut off, such morbid members would have tainted the whole frame of parliament. Their

disabling the eldest sons of peers from continuing members, for fear of undue influence, and the attorney-general as too immediately under the control of the King, and by his office an assistant of the House of Lords, 'his eye enduring no colours but one, the king's livery hindering his sight,' might also admit of apology; though the inconvenience of their exceptions was soon found to be so great, as to require a total abandonment of their indiscreet order. The future peer could have no better training than in the free school of the Commons' House; and what lawyer, in ability and information, ought to be more useful, whether discussing old statutes, or inventing new, than the first law officer of the Crown!

The first expulsion in the reign of Charles I. betrays great but honest severity. Mr. John Barbour, a lawyer, and recorder of Wells, for subscribing a warrant, (3 Charles I. for quartering of soldiers,) was brought to the bar, and pleaded that he acted from fear; yet, "because he would rather not lose his place than do justice, he was thought unfit to make laws that violates the laws, his faults being aggravated by his profession:<sup>a</sup> he had done well," said his quaint accuser, "to have remembered 11 Richard II., when Belknap, amongst other judges, gave his opinion for fear, unwilling to lose his cushion; when he came home he could not sleep, but said I deserve three H. H. H.—a hurdle, a halter, and a hangman. In 1 Henry IV., a law was made that fear should be no good plea, there being no hope of a coward." That terrible letter H. prevailed, and the *homo trium literarum* was ordered to be suspended the House, and sequestered.

For the constant, capricious, and tyrannical abuse of vindictive privilege, which branded, on worthless and frivolous pretexts, so many members with the stigma of expulsion, during the dark and bitter closing days of Charles I., there can be no justification and very slight excuse.<sup>b</sup> Sir Edmund Sawyer was sent to the Tower and excluded the House for ever, for having advised Mr. Dawes, if sent for to the bar, not to be examined on oath—constitutional advice undoubtedly, as the House had no power to administer an oath. We have seen how, in the petulance of conscious guilt, a despotic majority punished Mr. Gervas Hollis, Mr. Taylor, M. P. for Windsor, Mr. Trelawny, and Lord Digby, for having the manliness to avow their conviction, when they reflected on the sweet voices of those who loved (to borrow Laud's phrase) going thorough, the root and branch Parliament-men, who sentenced not merely for words spoken in the House, but for telling the whole truth from their heart in private conversation. "I have a blunt way in speaking my mind," said Mr. Holles, and the truth of what he said would, with a fair auditory, have gone far to excuse him. "It may be, peradventure, a folly in me, but it is a folly I love so well I will not part with it. I fear we have nourished in our bosoms those that will sting us to death."

Sir Edward Dering, a busy speech-maker on the popular side, till their aims too glaringly exceeded his own, had the mortification to find that even his harangue for abolishing the order of bishops would not atone for looking back with regret on the old paths of constitutional monarchy. For the alleged offence of printing a collection of speeches, which the

<sup>b</sup> The Parliaments and Councils of England.



House voted to be scandalous, and to be burnt by the common hangman, he paid the forfeit of being disabled from sitting any more, and was committed to the Tower.

Of the king's honour, as it might naturally be expected, the Long Parliament appear to have been far less provident than of their own. When the merry republican, Harry Martin, said, "It was better that one family should perish than the whole people," and, being taxed with his meaning, declared hardily that he meant the king, he was, in the indignation of the moment, disabled from sitting in parliament,<sup>c</sup> and lay for a fortnight in the Tower; but, upon a rehearing, January 6, 1645, the censure against him was annulled, and ordered to be rased out of the Journal, and he was re-admitted in triumph.

In order to weed the House of royalist members, the Long Parliament, at the very commencement of their sittings, came to a convenient resolution of comprehensive tyranny, "That all projectors and monopolists whatsoever, or that have any share, or lately have had any share, in any monopolies, or that do receive or lately have received, any benefit from any monopoly or project, are disabled by order of this House to sit here; and if any man here knows any monopolist, that he shall nominate him. That any member of this House that is a monopolist or projector, shall repair to Mr. Speaker, that a new warrant may issue forth, or otherwise that he shall be dealt with as with a stranger that hath no power to sit here." Diffusely as this inquisitorial vote was worded, its provisions must have been evaded, for only four members, Sir John Jacob and three others, received their dismissal in consequence.

<sup>c</sup> Forster's Statesmen.

Upon the propriety of another expulsion, there may now exist some difference of opinion. We read in the journals that John Frye, Esq., was suspended for writing a book against the Trinity; but, upon his declaring he abominated the opinions charged upon him, was re-admitted, February 3, 1648. On account of a subsequent relapse, he was finally disabled, February 24, 1650. If his treatise were not restricted to sober argument, if disgraced with ribaldry or invective, there seems strong justification of the Commons' vote; for he could not conscientiously comply with his writ of summons, and was unworthy to kneel in St. Stephen's Chapel; if, on the other hand, he merely exercised liberty of conscience, and advocated by force of reasoning Unitarian tenets, he ought to have been permitted to remain among an assembly of freemen, on condition of his complying with the statutory qualifications.

Mr. Frye might congratulate himself, considering the temper of the times, for his easy escape. In March, 1646, the Commons made an ordinance to punish Paul Best with death by hanging, for obstinate and blasphemous denial of the Holy Trinity. With one solitary instance of deserved severity, all must sympathize—the turning out a Mr. Henry Benson, member for Knaresborough, for granting and selling protections at 16s. a piece: the most corrupt teacher of Walpole's school would admit that such high privileges were sold scandalously cheap.

Upon the numerous expulsions which disgraced the House after its final appeal to arms, it will be unnecessary to dwell, as they can never be vouched for precedents, and were instances of pure, unmitigated despotism, acts of tyranny, compelled by those powerful

passions, terror and hate. A whole cloud of members (118), met at Oxford, were expelled for deserting the House, for being in the king's quarters and adhering to the royal party ; others for neglecting to attend, for executing the commission of array, for plots, for appearing in arms against the parliament ; eleven more were excluded upon charges brought by the army, till Colonel Pride took forcible possession of the lobby, and with high hand thrust forth all but a few miserable tools. Even these aped the tyranny of their seniors, and disabled Gregory Clement, Esq., May 11, 1652, 'his carriage being offensive and scandalous to the parliament.'<sup>d</sup>

At the Restoration, the House returned to its former good humour, and, in the general jubilee, the Convention Parliament had no heart to quarrel with any of its members, but dismissed one Mr. Lascelles, who had sat in judgment on the late King. It was only after an interval of nine years, when profligate waste had compelled measures of retrenchment, that a show of severity displayed itself upon a burgess, for being declared guilty of corruption. In 1669, Sir George Carteret was expelled, the examination of his accounts as vice-chamberlain having proved malversation. With the revival of religious jealousies and rumours of Popish plots, the House relapsed into a portion of its former rigour. In 1676, Sir Thomas Strickland was dismissed as a popish recusant convict ; Mr. Powle previously inculcating a salutary caution : " We cannot be too careful when we are about to expel a member, especially when we remember that a minor part has once expelled a major." Sir Solomon Swale was discharged from the service of the House on the same ground, "having been

<sup>d</sup> Burton's Diary.

divers times called upon to signify his conformity to the Church of England, which he hath not done."

Upon the single testimony of Oates, then by a blind fatuity deemed a preserver of the nation, Colonel Sackville, for vowing "that they were all lying rogues who said there was a plot," was immediately sent to the Tower and expelled. The House petitioned the king that he might be made incapable of bearing any office. Sir Robert Cann met with the same doom for publicly declaring "there was no Popish plot, but a Presbyterian plot," strengthening his assertion with strong expletives too much in vogue at that day. Sir Francis Wythens, afterwards damned to fame as the most worthless judge of even Charles the Second's reign, the jackall to Jeffries, incurred a similar fate for presenting an address expressing an abhorrence to petition his majesty for the calling and sitting of parliaments. Sir Robert Peyton, for attempting to turn the Popish Plot upon the Protestants, received his sentence upon his knees, in such coarse terms of contumely and insult as to provoke a challenge to the scurrilous Speaker. Colonel Wanklyn's dismissal, who went away weeping, for having trafficked with paper protections, has been already mentioned.

At the Revolution, the House, in using this final judgment, tempered justice with mercy: the first members dismissed the Convention Parliament were Sir Henry Monson and Mr. Fanshawe. When summoned to attend, for refusing to take the oaths and declaration, 13th May, 1689, Sir Henry Monson said, "He was sorry that for some reasons he could not comply to qualify himself to sit in the House; but that those reasons would no way incline him to disturb the government, and that he submitted himself



to the House.” It was resolved that Sir Henry Monson be discharged from being a member.<sup>e</sup> On Mr. Fanshawe declaring that he was not satisfied to take the oaths, the House came to a resolution equally mild and decisive, excusing him from further attendance, and directing a fresh writ to be issued. But when, some time afterwards, Mr. Cholmondeley, who had absented himself till constrained to attend in his place, stated that he could not as yet take the oaths, that he did it not out of any wilful humour, and humbly submitted his case to the House, fearful of this stubborn spirit increasing, and wishing, probably, to deter other nonjurors, it was resolved to commit their member to the Tower, before directing a new election.<sup>f</sup>

So far the rigour of the House proceeded from motives of self-defence, and may be justified on the principle that the body should be united by a common bond of fealty,—that the military oath might be required from all, to ascertain what spirit each member was of, in those times of a disputed succession. The necessity for taking an oath could not be safely dispensed with. A letter was read by the Speaker from John Archdale, member for Chipping Wycombe, declaring “That the burgesses being voluntarily inclined to elect me, I did not oppose their inclinations, believing that my declaration of fidelity, &c., might, in this case, as in others where the law requires an oath, be accepted. I am ready to execute my trust, if the House think fit to admit me thereupon, which I do humbly submit to their wisdom and justice, and shall acquiesce in what they will be pleased to deter-

<sup>e</sup> Parliamentary History, vol. v.

<sup>f</sup> Journals, vol. x.

mine therein. This, being all at present, I remain thy real and obliged friend,—JOHN ARCHDALE.”

He was ordered to attend.<sup>g</sup> Having come into the midst of the House, almost to the table, Mr. Speaker, by direction of the House, asked him whether he had taken the oaths, or would take the oaths, appointed to qualify him to be a member, to which he answered, “That, in regard to a principle of his profession, he had not taken the oaths, nor would take the oaths.” The Speaker was ordered to issue a new writ for Chipping Wycombe.

By the punishment of Sir Richard Sawyer, the House meant to express a parliamentary condemnation of his unjust, arbitrary, and cruel conduct as attorney-general under Charles, especially for his share in the legal murder of Sir Thomas Armstrong. By the large majority of 131 to 71, they voted for cutting off the cankered limb. He at that time represented the University of Cambridge, and it is a strange proof how little the disgrace must have affected the public mind, that he should have been forthwith re-elected. He was expelled on the 20th January, 1689. A new writ was issued on the 30th, but the execution of it stayed by the dissolution of parliament. Four days after that, the University re-chose him for their member; as far as they could, consecrating the only victim offered up by the Convention, in a spirit of righteous revenge, to the manes of those who had perished under the mockery of law.

The offences for which the following parliaments declared some of their members unfit to sit among them may be divided into three classes—notorious corruption, libels against religion or the common-

<sup>g</sup> Journals, vol. xii.

wealth, shameful punishments and crimes against the State.

In the list of the decimated, as often the scape-goats of prejudice and party rage as of delinquency, are included several eminent characters, whose histories deserve and will repay more than passing notice. In looking over the black catalogue, Mr. Burke was excited enough to exclaim, in the discussions upon Wilkes's expulsion,<sup>h</sup> "I appeal to the records of the House, whether there has been a single expulsion of a member that has not been to the disgrace of the parliament that expelled him?" The interrogatory is too sweeping: there are individual cases which compel an answer in the negative—that of the infamous Speaker, Sir John Trevor, in particular, most properly discarded the House, of which he was the scandalous head, for receiving bribes. The expulsion of a tory barrister, Mr. Hungerford, for receiving from the Company of Orphans a present of twenty guineas, for expediting their bill through the House, may be ascribed to factious spleen much more than to public principle. His little pinnacle appears to have been swamped in the ground-swell of popular indignation against that first-rate delinquent the Speaker; for the gratuity or fee would seem to have been much too slight a pittance for a bribe. A ready debater, indulging in little jocularities and personal sarcasm, he had doubtless whetted the resentment of the ministerial party, and converted political opponents into personal enemies. Returned to the next parliament, with no sufficient loss of character to damage his effectiveness as orator, he appears to have

<sup>h</sup> The Cavendish Debates.

borrowed additional acerbity from the disgrace, and to have imposed his own doom on one still more undeserving, the good-natured, persecuted Steele. The sting of such a staunch tory was sure to lose none of its venom at the accession of the House of Hanover. A courtier having defied anybody to charge the administration with any breach of public faith or of the laws, since his Majesty's happy accession to the throne, Mr. Hungerford said,<sup>1</sup> "That this put him in mind of a coronation, when the king's champion, coming into Westminster Hall, throws down one of his gloves to make the challenge, but that he never saw anybody so bold as to take it up." When the House voted an impeachment against the Earl of Strafford, omitting other ministers equally implicated, he remarked, with a sarcasm which borrowed its point from its truth, that "though the Bishop of London had an equal share with the Earl of Strafford in the negotiation of peace, he was, it seemed, to have the benefit of clergy." At the time of the quarrel between Stanhope and Walpole, when the triumphant, but not immaculate, whigs re- criminated on each other about the sale of certain reversions, Mr. Hungerford expressed his sarcastic sorrow at seeing these two great men fall foul of one another ; "however, in my opinion, we must still look upon them as patriots and fathers of their country ; and, since they have by mischance discovered their nakedness, we ought, according to the custom of the East, as the Scripture tells us, cover it *by turning our backs upon them !*"

Against the abortive bill of attainder with which a vindictive House threatened the Earl of Oxford, the

<sup>1</sup> Parliamentary History, vol. vii.



once expelled member declaimed, with natural and eloquent indignation, "that for his own part, he had ever been against violent proceedings; that, in his opinion, when the life, fortune, or reputation, of any man is concerned, the Parliament ought to go upon evidence as strong and as full as is required in Westminster Hall; and that he had observed that all bills of attainder proceeded from party piques." When, shortly after the suppression of the House of Convocation, a high-church divine, Dr. Snape, who had made himself conspicuous in the controversy against the Bishop of Bangor, was nominated by Sir William Wyndham to preach before the House, and his appointment warmly opposed; Mr. Hungerford said that, "if the court had not interposed, the doctor might have shewn the bishop fine sport, but that, the king having ordered his ministers to disband part of the army, they had by mistake disbanded the Convocation."

This readiness of repartee Mr. Hungerford carried with him to the conduct of causes in Westminster Hall, and, to judge from the State Trials, he must have been one of the wittiest lawyers of his day. On the trial of Francis he pretended a precedent in the time of the attorney-general (Sir Edward Northey), and, when corrected by the attorney, "I was not attorney then,"—he retorted, "I beg Mr. Attorney's pardon, but he has been in and out so often, that I may have been easily led into a mistake." This and other prisoners indicted for high treason, he defended with great ability. Taking an objection to the indictment, that the letters, the supposed subject of the traitorous correspondence, were not set out at length, he denied

that the prolixity this would occasion was an answer :  
 “ As to what Mr. Solicitor insists, that to insert the letters at large would make the indictment long and tedious, for God’s sake, my Lord, is there any competition between the charge of two or three skins of parchment and a man’s life ?”<sup>k</sup>

To the great and deserved success of this clever lawyer, the notoriety of his expulsion from the House doubtless contributed. The fortunes of another member, Mr. Henry Guy, secretary to the treasury, who was expelled at the same time for taking a douceur of 200 guineas for the payment of the arrears due to a regiment, appear to have been rather advanced than deteriorated by this slight episode in his political history. Official corruption was so common and so little regarded in those times, that the expelled secretary would seem to have lost none of his personal interest by the stigma.<sup>1</sup> It is clear from the Shrewsbury Correspondence and Vernon’s Letters that he possessed great weight on his return to the House — he retained his post for three successive reigns, and was among the few admitted to the convivial society of the king. A devoted partisan of Lord Sunderland, he writes of his frequent visits to Althorpe, and of his promising never to fail the Duke of Shrewsbury. He died extremely rich, and left the bulk of his fortune to the celebrated William Pulteney, afterwards Earl of Bath, £40,000 in cash, and an estate of £500 a year. The counsel of this grey-headed corruptionist to a young friend is highly characteristic of the man and of the times. “ Henry Guy told me, among other

State Trials.

<sup>1</sup> Shrewsbury Correspondence.

excellent pieces of advice," writes Lord Bolingbroke,<sup>m</sup> "when I first came to court, 'to be moderate very and modest in my applications for my friends, and very greedy and importunate when I asked for myself.'"  
"*Proximus sum mihi*" was the motto then for the Secretary to the Treasury.

Their visitation in the following year—for the delinquencies of members multiplied with a rapidity of which modern times can furnish a most inadequate notion—embraced gentlemen of consideration from their rank and wealth, but conspirators in a most clever and unscrupulous scheme of fraud and forgery. Certain exchequer bills, it appears, were issued to supply the scarcity of silver, which had been called in for re-coinage—the paper prop by which Charles Montague supported public credit, when its silver pillars had been removed. When first issued, they bore no interest, but, when paid into the bank and issued a second time, they bore the yearly interest of £7 12s. To secure this bonus, Mr. Charles Duncombe, receiver-general of the excise, member for Downton, and Mr. John Knight, treasurer of the customs, member for Melcombe Regis, combined with subordinate officers of the revenue to indorse the exchequer bills which had not circulated before, and thus defrauded the treasury of the premium. A deputy-teller of the exchequer turned king's evidence and laid bare the whole fraud; upon whose clear testimony the two members were committed to the Tower, and afterwards expelled. But, as this punishment, how disgraceful soever to a man of honour, seemed practically inadequate to the magnitude of their crime, a Bill of Pains and Penalties, more effectually to punish them for the false indorse-

<sup>m</sup> Bolingbroke's Letters.

ments, passed the Commons, amercing Mr. Charles Duncombe, whose wealth was computed at the immense sum of £400,000,<sup>n</sup> in half his income. Kennet says,<sup>o</sup> that "the bill being sent up to the Lords, and their lordships being equally divided, the Duke of Leeds gave his casting vote for its rejection." In this assertion, the whig historian is clearly inaccurate, as, in the Lords, whenever the numbers are equal in division, the question passes in the negative: there is no casting vote. But it may be readily believed that the Duke of Leeds would give his vote and proxy in favour of a brother-corruptionist; and rumour ascribed golden reasons for his clemency, nor did the character of the peer disentitle the report to credit. At his instigation, the Lords ordered Duncombe to be set at liberty, which the Commons resented so highly that they caused the liberated banker to be remanded to the Tower, and detained him there till the close of the session. Their sentences would have been less obnoxious to censure, had they always fallen on objects equally deserving of punishment, though, even in this case, the dispute between the two Houses has given rise to a suspicion, that the wealthy goldsmith was assailed more for his politics than for dishonesty.

The excitement of a contested election called forth their next mark of severity. During the whole of the session, the public virtue of the whigs had burnt at a white heat. In a new House of Commons, the tories, as soon as they found themselves lords of the ascendant, advocated the cause of public morals at the expense of their adversaries, with equally fiery zeal. An opulent whig merchant, Mr. Shepherd, having freely dispensed his money at the general election, to

<sup>n</sup> Somerville.

<sup>o</sup> Kennet's History of England.



procure the return of himself, his son, and several friends, fell under the ban of Sir Edward Seymour, who indignantly denounced, in a tone of Spartan virtue, those corrupt arts in others, of which he could not perceive the sin, when confined to his own party. A committee was appointed at his instigation to scrutinize these malpractices, and their report threw the purist majority into a rapture of resentment. Their resolutions hastily determined that Samuel Shepherd, senior, is guilty of notorious bribery, in obtaining his election for Newport—that he is guilty of unwarrantable and indirect practices, to obtain the election of a member for Bramber—that he is guilty of bribery and corrupt practices at Wooton Bassett and Malmsbury.<sup>p</sup>

Both father and son were discharged from being members, and Mr. Shepherd, senior, received his sentence of expulsion on his knees, was voted to the Tower, and his agents committed to Newgate. The House then drew breath, and voted that they would, that day se'nnight, take into consideration how they would proceed further with relation to the crimes whereof S. Shepherd stood convicted. No ulterior proceedings appear to have been taken, except a resolution “that Sir Edward Seymour had made good his general charge against Mr. Shepherd of bribery and corruption in several boroughs,” and a unanimous vote of thanks for the good service the baronet rendered to the public. They at the same time discharged from Newgate eleven subordinates, who had been employed in distributing the rash Shepherd's bribes, upon their humble petition that the House would commiserate their condition, forgive their fault, and grant their enlargement. In 1718, when George I. accepted

the office of Governor of the South Sea Company, Shepherd was appointed by the whigs Deputy-governor. His condemnation at Westminster had most probably left his character in the city untarnished—party prejudices vanquished public virtue, and the ostracized of one faction was welcomed as a martyr by the other.

In Queen Anne's reign, the bolt that was first hurled by party pique fell on the Earl of Ranelagh, who had been Paymaster of the Forces since the accession of James II., and was unexpectedly summoned to account for twenty-one millions of money. The commissioners of public accounts pointed out some strange general items in the noble paymaster's balance sheet.

“Paid to several persons for especial services and for sundry disbursements for especial services relating to the forces, £27,150 16s. 3d.<sup>a</sup>

“Paid to several persons for contingencies of divers natures, £50,929 17s. 3½d.”

The Earl made an ingenious defence, that these two sums were mentioned in general terms in the abstract which he furnished to avoid perplexity; but that, in the accounts themselves, they would find the particulars, 210 in number, enumerated. With regard to an alleged balance supposed to be due to himself, the paymaster must add, though with grief he says it, that he was never yet in a condition to lend money, his folly having always led him to spend his income. Notwithstanding the mystification of accounts, the startling fact could not be denied, that the Earl of Ranelagh had received twenty-one millions of money in fourteen years, and had passed no account from

<sup>a</sup> Parliamentary History, vol. vi.

March 1692 till 1703. Though the discovered defalcations appear to have been comparatively trifling, the vouchers proved so unsatisfactory as to excuse a sentence of expulsion. Burnet's narrative of the transaction is more prejudiced and partial than a long acquaintance with even his strong bias in politics would have led us to expect. "He gave clear answers to the commissioners appointed to examine his accounts, except to one deficiency, the sum returned for pay of some disbanded regiment, of which no entry appeared in his books. He saw that his good place was his greatest guilt, and this he quitted. To make a show of severity, the Commons expelled the Earl the house for a high crime and misdemeanor in misapplying several sums of the public money. But, upon all this canvassing, he appeared much more innocent than even his friends had believed him." His profuse expenditure and laxity of morals might well account for these dark suspicions. "Lord Ranelagh," writes a shrewd observer,<sup>r</sup> "hath spent more money, built more fine houses, and laid out more on household furniture and gardening, than any nobleman in England, a great epicure, and very expensive, is above £100,000 in arrear; but escapes with the punishment of losing his place, though several parliaments have been calling for the account. Bold and happy in jests and repartees, and hath often turned the humour of the House, when they designed to be severe; fat, and black." The shame of expulsion, which a man of honour would dread now more than death, was then, it would seem, so slightly heeded as not to be enumerated among the punishments.

The melancholy close of a corrupt courtier's life is

<sup>r</sup> Mackey's Characters.

disclosed in Swift's Diary for 1711. "Lord Ranelagh died on Sunday: he was very poor and needy, and could hardly support himself, for want of a pension, which used to be paid him, and which his friends solicited as a thing of perfect charity. He died hard, as the term of art here is, to express the awful state of men who discover no religion at their death."

For two other expulsions in this reign, on the ground of corruption, there can be alleged much less excuse. Mr. Ridge, an opulent brewer, member for Evesham, who resembled the Whitbreads of modern times, was dismissed the House on pretence of not having delivered the quantity of beer, by 2000 tons, to the fleet, which he had contracted to deliver, and for which he charged. This notorious embezzlement, as the Committee termed it, was at once explained away. In the Mediterranean, as the seamen preferred wine and water, the contractor, by an arrangement with the Victualling-board, furnished them with money to the exact amount of deficiency in his contract. The prosecution intrusted to the attorney-general was tacitly abandoned. Mr. Ridge continued to supply the navy, as before, retained his office, and preserved his character, but lost his seat! With similar injustice, Colonel Cardonnell, secretary of the Duke of Marlborough, was expelled by a majority of 125 against 99, for taking a petty gratuity of 500 gold ducats annually from the contractors for bread, and bread-wagons, for the army in the Low Countries. It was urged in vain that such gratuity had been invariably allowed to the secretary of the commanding officer;<sup>s</sup> that it could be no more deemed bribery than the acceptance of a gold snuff-box by an ambas-

<sup>s</sup> Coxe's Marlborough.



sador. The House voted the taking this accustomed present to be unwarrantable and corrupt ; for they wished to strike at the general in the person of his favourite aid-de-camp, and, so that the Duke of Marlborough was smitten, cared not for the fairness of the blow.

How far another stroke of vengeance against a more formidable antagonist, the celebrated Robert Walpole, might be justified by the proof of corruption, whether he had in fact made a corrupt bargain, is a question involved in considerable difficulty. The repeated votes of condemnation upon this obnoxious and active opposition member, form precedents of great importance in the annals of vindictive privilege.

On the 17th January, 1711-2, Mr. Walpole was voted by the House guilty of a high breach of trust and notorious corruption, in receiving the sum of 500 guineas and taking a note of £500 more, on account of two contracts made by him when secretary-at-war, pursuant to a power granted by the lord-treasurer. For this offence he was committed first to the Tower, and by a majority of 170 over 118 expelled the House. He was immediately re-elected for Lyme Regis, and again expelled ; the House voting “ that Robert Walpole, Esq., having been, this session of parliament, committed a prisoner to the Tower, and expelled this House for a high breach of trust in the execution of his office, and notorious corruption when secretary-at-war, was, and is, incapable of being elected a member to serve in the present parliament.” The terms of this vote were severely criticised, the precedent being mainly relied upon for the repeated expulsions of the notorious Wilkes. Junius vehemently contended,<sup>t</sup>

<sup>t</sup> Letters of Junius.

“ that the House, by this very vote, themselves understood and meant to declare, that Mr. Walpole’s incapacity arose from the crimes he had committed, not from the punishment the House annexed to them. They do not tell us,” this masked champion against privilege contends, “ that he was incapable because he was expelled, but because he had been guilty of such offences as justly rendered him unworthy of a seat in Parliament.” This interpretation appears strained ; the House in their vote most probably intending to revive the obloquy of the disgrace by a repeated enumeration of his crimes.

Few, if any, were more obnoxious or more formidable to that parliament than Mr. Walpole, the victim of their resentment rather than justice, whom they punished as severely as they could, both by imprisonment and incapacitation ; the first of these penalties ended in a few months with the prorogation, and the consequences of the latter in a year and a half.<sup>a</sup> Nor, supposing Walpole guilty, was the first punishment disproportionate to the offence, as it branded the person unfit to be trusted with the power to give or to manage the public money. A fraud on the revenue fell under the immediate cognizance of the guardians of the public purse, who might well adjudge the corrupt functionary unworthy to continue invested with a sacred trust. But if the punishment was not excessive, was the judgment just ?

Mr. Robert Mann, the agent to Sir Robert Walpole, who had received the money for the first note and given his employer a receipt, and in whose hands the second note had been deposited, refusing to furnish a copy of the note to the commissioners, or to be further

<sup>a</sup> Cavendish Debates.

examined, was ordered into the custody of the serjeant for contempt.<sup>v</sup> The apologists for Walpole asserted, that Mann had not received the money for his own use ; that it was the produce of his private share in the profits of the contracts which his patron had stipulated for him with Sir Samuel McClellan and Mr. John Campbell ; and that Walpole could not be guilty of breach of trust, because he made the first contract in conjunction with Lieutenant-General Erle, and Mr. How. It did not appear, however, that either of these gentlemen were privy to that part of the contract, by which a fifth portion of the profits should be reserved for the convenient friend. A suspicion of some corrupt collusion between the secretary and contractors naturally arises from this privacy. Against the evidence of the note itself, Colonel Douglas, a member of parliament, declared that Sir Samuel McClellan, upon his death-bed, assured him that Walpole, on the first contract, had apportioned a fifth part of the profit to a friend, whose name Colonel Douglas remembered, upon the individual being suggested, to be Mann. Assuming this to be true, collusive contracts in the name of a third person are not uncommon. It is scarcely probable that a secretary-at-war would lavishly give away so large a sum as £500 a year, when he might with equal ease and safety have made the money his own. The case remains enveloped in suspicion, and the conclusion that can be drawn in Walpole's favour, is the Scottish verdict of "not proven." His judges we cannot justify, but neither can we acquit the condemned. He accused his judges of violence and injustice, and wrote more than one pamphlet to vindicate his innocence.

<sup>v</sup> Ralph's Ministry of Sir Robert Walpole.

In his notes on Burnet, Speaker Onslow relates the transaction thus drily. "A bill had been remitted to Walpole of £500, by those who had contracted to forage the troops that lay in Scotland;" and Lord Hardwick adds, "Walpole indorsed the bill, and appears to have made the bargain. The money is said to have been for Mr. Mann, and the practice, though not uncommon, is not a commendable one." Nearer observers painted the transaction of the ex-paymaster in darker colours. Mr. Wortley and his wife, the celebrated Lady Mary, writing separately, both thoroughly hostile to the Queen's Ministry and the Parliament it swayed, yet both mentioned Walpole as a man, whom the clearest conviction of corrupt practices had left with a blot upon his character that nothing could efface.<sup>w</sup> His future unblushing avowal that every man had his price, his putting up public virtue for sale, and the suspicious splendours of Houghton, have no tendency to remove the stigma.

An interesting anecdote proves that Walpole had the merit of gratitude, if not integrity. On his being ordered to withdraw, while the House voted his commitment to prison, one personal friend only, Daniel Campbell, of Shawfield, a Scotch member, rose and went out with him, and attended him to the gates of the Tower. Sir Robert did not forget this when he was minister. Mr. Campbell, a moderate man, asked few favours for himself, but any person in whose behalf he could be induced to say a word had a fairer chance of success, than if patronized by the greatest and most powerful of Walpole's supporters.<sup>x</sup>

His imprisonment in the Tower, where he held a

<sup>w</sup> Lord Wharncliffe's Edition of Lady M. Montague's Works.

<sup>x</sup> Horace Walpole's Letters.



crowded levee of clients and admirers, has been called the prelude to his rise; and Lord Lansdowne, who was consigned to the same apartment as a suspected person, in September 1715, wrote the following lines, to point a moral under the ex-minister's name, which he had left on the window:

“ Good unexpected, evil unforeseen,  
Appear by turns, as fortune shifts the scene;  
Some raised aloft, come tumbling down again,  
And fall so hard they bound and rise again.”

The phalanx of parliamentary victims is indeed large who have acquired celebrity from unjust persecution, and caught preferment with the rebound—the guilty at least as often as the innocent. The exercise of this odious and painful, but necessary, part of the Commons' judicature, upon such of their body as have been proved guilty of corrupt practices, admits of justification, on the principle that they are not trustworthy to continue guardians of the public—not pure enough to be keepers of the public purse. We may admit that the evidence was often too slight to sanction this visitation. We need not impugn their right to adjudicate, the judges may be condemned without questioning their jurisdiction.

## CHAPTER V.

THERE is another class of offences, religious and political libels, whose punishment calls for extreme caution, as, upon such subjects, the judgments of a capricious majority are always more likely to be affected by prejudice and passion, than by that calm act of reason which ought alone to influence a judicial tribunal. Fortunately, since the Revolution, instances of this kind have been exceedingly few, and even these might have been spared.

The circumstances attending the expulsion of Mr. Asgill, in 1707, prove that the author was amerced for the vices of the man, and that his wicked book might have gone unquestioned, had not his public deportment occasioned scandal. He was a lawyer of such sharp practice and unenviable notoriety, that the House might be somewhat excused in making violent efforts to rid themselves of his infectious companionship. Patronized in early life by Dr. Barebones,<sup>a</sup> a famous cheat and projector, who built the New Square of Lincoln's Inn, he was nominated by the Doctor's will his executor and residuary legatee, upon express condition that he would pay none of his debts. The much esteemed executor, worthy of his trust, summoned the creditors together in Lincoln's Inn Hall, and there with com-

<sup>a</sup> Biographia Britannica.

mendable gravity read aloud to them the will, concluding, "You have heard, gentlemen, the deceased's testament: I will religiously fulfil the wishes of the dead." It might have been doubted, whether his power was equal to his honest inclination, in those days of imprisonment for debt and easy arrest, when not even the sacred person of a Russian ambassador could escape the clutch of the sheriff's officer. But Asgill knew that he could insult the creditors with impunity. Dr. Barebones had secured to himself the snug borough of Bramber, by purchasing the whole street, and, as Asgill became owner of the town on his death, he had canvassed with success the votes of the electors. The House of Commons was a sanctuary, which not even the boldest bearer of a writ could penetrate. Mr. Asgill sat and voted quietly for several sessions. When the Commissioners repaired to Ireland, in 1699, to resume the grants of forfeited estates, he went over to practise as a conveyancer, and, probably with a view to attract notice, published a *Treatise on the Possibility of avoiding Death*.

From Ireland, immersed in law-suits, the eccentric lawyer drained an ample fortune. Having bought a life estate of £3000 a year, for a small consideration, he gained a seat in the Irish House of Commons, but was expelled at the end of four days for his book. "If his work were from above," he said, "it would kindle like a firebrand, and set the whole world in arms against death. If men and women will read the study of a seven years' recluse, they will find it not the most unpleasant hour that ever they spent in their lives. For this I know, that nothing is more pleasant to us than news, and what I have said was never said by man before." This of course was the

true reason for his saying it! Ejected in 1703 from the Irish Parliament, he returned to England, and sat for Bramber without objection. In an interval of parliament, in 1707, being taken in execution at the suit of a creditor, he was committed to the Fleet.<sup>b</sup> When the House met, he petitioned for his discharge, and was delivered by the Serjeant with his mace. But, between his apprehension and discharge, complaint had been made of his book, and, after a vigorous defence, the daring author was expelled, just lucky enough to escape by stratagem from the officers who lay in wait for him at the door.

Within the walls of one or other London prisons, he lingered thirty years, and published a number of political pamphlets in such idiomatic English, that Coleridge,<sup>c</sup> no mean critic, has pronounced him and Defoe to be the two best writers in our language. He also contrived to eke out a scanty subsistence by drawing bills and answers in Chancery. He affected eccentricity, and from habit became what he affected, singular alike in person, speech, and dress. Death at last relieved this misguided literary member from the long penalties of want of principle in 1738, at the advanced age of eighty. Being taunted by a friend, shortly before he died, with the question whether he still thought he should be translated, he replied, with a smile, "he believed he should not, as he found his faith begin to stagger."<sup>d</sup> The impostor to others had never been a dupe to himself.

A far more excellent writer and thoroughly amiable man, Sir Richard Steele, was subjected to the same indignity, not for any personal demerit, but as a

<sup>b</sup> Granger.      <sup>c</sup> Coleridge's Table Talk.

<sup>d</sup> Atterbury's Correspondence, by Nicholls.



sacrifice to the spleen of faction. The circumstances of his cruel fate deserve especial mention. An eager and satirical whig pamphleteer, the leading antagonist in the war of diurnals against Swift, he was elected Burgess for Stockbridge, and provoked a spirit of uncontrollable envy by his return to the House, which he aggravated by his own want of discretion. We have seen that, on the first day of the new parliament, as soon as Sir Thomas Hanmer had been proposed for the Chair, Mr. Steele, with good-natured volatility, volunteered his praise:—"I rise up to do him honour," and that, instead of the respect usually paid to a young member, he encountered shouts of derision. The universal hiss of scorn has been well described in his own lively narrative:—"At the same time, Mr. Steele does not attribute this particular outrage to the House, any further than they ought to have suppressed it, and severely observed upon it by turning out the offenders, who, it is supposed, were a parcel of rustics who crowded in with the members before the election of the speaker, from a received error that there is no authority in the House till he is chosen. As he came out of the House, he could hear nothing but these loud critics talk to one another—'Oh, it is not so easy a thing to speak in the House,'—'He fancies because he can scribble,'—and the like deep animadversions."

The malice of his enemies was not permitted to explode in idle exclamations. As the petition which had been lodged against his return was the seventeenth in number, they could not wait for the maturity of an election committee's sure but tardy injustice, and urged a complaint against several scandalous papers

Steele's Apology.

lately published under his name. Some bitter passage in the *Englishman*, of which he was the real, and from a pamphlet called the *Crisis*, of which he was the nominal, author, dictated, according to Wyndham, "by the spirit of rebellion," but whose scandal consisted in their ability and covert sarcasm, had kindled the wrath of the tory members. "Those noisy men,"<sup>f</sup> wrote the sly, stanch Hanoverian, "who embarrass the nation in every question with calling out the church, are but like the weathercocks and clappers of the steeple; the sober, and laborious, and peaceable churchmen are its real support and pillars. I wish that his electoral highness of Hanover would be so grateful as to signify to all the world the perfect good understanding he has with the court of England, in as plain terms as her majesty was pleased to declare she had with that house on her part. This last circumstance, dear Jack, would be very pleasing to all of us who are churchmen, because, if the elector should be any way disoblged, I am confident her majesty has given no cause for it; and I cannot but attribute any misunderstanding, if such there should be, to the artifices of some new converts, who, for ought I know, may still be Presbyterians in their hearts."

Other stirring passages, written with great power, but no abuse of controversy, however they might annoy a cabal of Jacobites, ought never to have provoked parliamentary censure, unless on the naked principle that it would tolerate no political discussion. "If people talk to me of hereditary right, and then follow it with professions for the House of Hanover, which can have no additional security from the urging of hereditary right, I shall no more believe them

<sup>f</sup> The Crisis.

Hanoverians, than I should think a man religious, who should make a blasphemous discourse and close it with the rehearsal of the creed. I shall not presume to enter into an examination of the articles of peace between us and France; but there can be no crime in affirming (if it be a truth) that the House of Bourbon is at this juncture become more formidable, and bids fairer for an universal monarchy, and to engross the whole trade of Europe, than it did before the war."

After the recitation of these edifying paragraphs, not unlike the cracking of some mischievous squibs, the House ordered that Mr. Steele should attend in his place the next morning. He gained nearly a week's delay to prepare for his defence by one of those dramatic tricks that would have gladdened the heart of Sheridan. His chief accusers, Foley and Harley, being rigid Presbyterians, though siding for the season with High Church, Mr. Steele put on a sanctified air, and, in a whining tone, "declared in the meekness and contrition of his heart, that he was a very great sinner; and hoped the member who spoke last, and who was so justly renowned for his exemplary piety and devotion, would not be accessary to the accumulating the number of his transgressions by obliging him to break a Sabbath of the Lord by perusing such profane writings as might serve for his justification."

As the burden of his essays had been to prove that the demolition of Dunkirk was merely colourable, Mr. Steele had the firmness, in the interval between the charge and his defence, to move that the reports of the engineers might be laid before the House; but when his motion had been rejected by a large majority, "he prepared his mind," he informs us, "as well as he could, to meet with his disgrace, and considered

all that was to follow as a farce, wherein heedless men were to indulge their curiosity, mirth, or cruelty, without any regard to justice, or how far what they were doing would effect him or themselves."

He appeared on the appointed day near the bar, standing between the two great leaders of the Whig party, Stanhope and Walpole, and, in reply to the first question proposed to divert the company, "Whether the member accused owned the writings or not," at once acknowledged them. "I now frankly and ingenuously own all those papers laid to my charge to be parts of my writings. I writ them in behalf of the House of Hanover, and I own them with the same unreservedness with which I abjured the Pretender. I humbly submit myself to this honourable assembly, and depend upon your justice."

If Mr. Steele's own account of this curious scene be not highly coloured, the charge itself derived no strength from the eloquence of those who urged it. "The onset was made in the poorest manner, and the accusation laid with an insipid action and cold expression. The accuser arraigned a man for sedition, with the same indolence and indifference as another man pares his nails. What was spoken appeared only a rheum from the mouth, and Mr. Foley, as well as do what he did, might have blown his nose, and put the question! But though the choler of my accusers was corrected by their phlegm, insomuch that they were harmless with ill-will; yet, had they perseverance to go on, insensible of the raillery of the contrary party and the contempt of their own."<sup>s</sup> The illustrious victim of party spleen spoke for three hours, with re-

<sup>s</sup> Coxe's Walpole.



markable spirit and effect. Bishop Newton has related in his Memoirs, upon the authority of Pulteney, that the Kit-Cat Club (then the *élite* of Whiggism) would not permit Steele to compose his own defence, but directed that Addison should make it for him. They probably suspected that his imprudent vivacity would draw down coals of fire upon his head. Addison declined the injunction, thinking the Whig aristocrats were treating his friend too much as a school-boy, but Walpole suggested a very good speech, the greatest part of what he actually did say on the occasion.

From internal evidence there can be little doubt that much of the composition was the orator's own. It is full of that artless sensibility, better than forms of art, which enchants a reader of the *Tatler* and *Guardian*. The simplicity of his opening is characteristic of the man. "Mr. Speaker, you will easily believe, I have not been in a very sedate temper ever since I came into this House. When I composed those writings of which I am accused, I studied carefully to avoid committing any fault in them, and now, on a sudden, I am to rack my invention to find out guilt in them. But, if you will forgive my blundering and stammering, amidst a huddle of papers you see in my hands, not read over since transcribed, and the references from some to others of them not fixed in my mind, you shall have the truth of my heart in this discomposure, which will, I hope, with generous men, do more for me than what I could have produced with more meditation." Having occasion to cite a passage in which he had made laudatory mention of the author of the *Examiner*, who had since overwhelmed him with contemptuous abuse; the good-natured Steele thus passed him by, speaking, as it were aside, a mild

rebuke. "The man writes much like a gentleman, and goes to heaven with a very good mien. The gentleman I here intended, was Dr. Swift! This kind of man I thought him at that time; we have not met of late; but I hope he deserves this character still."

The closing appeal of the persecuted essayist must have ensured an acquittal, had his hearers been open to the accents of equity or reason. "I have heard it said in this place that no private man ought to take the liberty of expressing his thoughts as I have done in matters relating to the administration. I do own that no private man ought to take a liberty, which is against the laws of the land. But, sir, I presume that the liberty I have taken is a legal liberty, and obnoxious to no penalty in any court of justice; if it had, I cannot believe that this extraordinary method would have been made use of to distress me upon that account. And why should I here suffer for having done that, which perhaps in a future trial would not be judged criminal by the laws of the land? Why should I see persons whose particular province it is to prosecute seditious writers in the courts of justice, employing their eloquence against me in this place? I think that I have not offended against any law in being: I think that I have taken no more liberty than what is consistent with the laws of the land; if I have, let me be tried by those laws. Is not the executive power sufficiently armed to inflict a proper punishment on all kinds of criminals. Why then should one part of the legislative power take this executive power into its own hands? But, sir, I throw myself upon the honour of this House, who are able, as well as obliged, to screen any commoner of England from the wrath of the most powerful man in it, and who will

never sacrifice a member of their own body to the resentment of any single minister."

With this appeal Mr. Steele made his bow, in his own words, almost ludicrous from their simplicity, "barring that I made the best and most respectful obeisance I could to the speaker, with a very awkward and unwilling air I withdrew; and the next news I heard was that I was expelled."<sup>h</sup>

But this disagreeable consummation the Tory majority did not attain till after a display of one of the most stirring conflicts, and a trait of the finest character that ever illustrated that turbulent arena. Till eleven o'clock at night, (an hour singularly late in those times of early debating,) had the advocates of constitutional liberty maintained a losing fight against the wounded self-love of the administration. Walpole gave token of his fitness for a leader of the House, and Lord Finch compelled esteem from his very foes. Grateful to Steele for a mark of attention to his sister, he stepped forward and made attempts to speak in his behalf, but, being embarrassed by an ingenuous modesty, and over-deference to an assembly, in which he had not yet been accustomed to speak, he sat down in visible confusion, saying, so as to be overheard, "It is strange I can't speak for this man, though I could

<sup>h</sup> Immediately, on retiring, poor Steele wrote the following characteristic note to his shrewish wife.

"Temple, 7 o'clock, March 18, 1713-4.

"Dear Prue,

"I have made my defence, and am ordered to withdraw. Addison was sent out after me by my friends to bid me not be seen till I heard what will be the censure. Nothing can happen to my condition in private the worse, and I have busied myself enough for the public."

readily fight for him." His words being whispered from one to another had the effect in an instant of an electric shock, and a sudden cry from all parts of the House of "hear him! hear him!" with gestures and tokens of encouragement, brought Lord Finch again on his legs, who, with awakened recollection and composure, delivered a speech on the occasion, in which, as it was related to a correspondent of Steele's, in the language of the theatre, "there was not a word which did not tell. The eyes of the whole company were upon him; and, though he appeared to have utterly forgotten what he rose up to speak, yet the generous motive which the whole company knew he acted upon, procured him such an acclamation of voices to hear him, that he expressed himself with a magnanimity and clearness, proceeding from the integrity of his heart, which made his very adversaries receive him as a man they wished their friend."<sup>i</sup>

The friendship of such a nobleman did honour to the generous Steele, "the most agreeable rake that ever trod the round of indulgence,"<sup>k</sup> yet the most imprudent, whose heart was in the right place, even when his practice savoured of the swindler. He returned to Parliament, as Sir Richard Steele, the more distinguished for his fall.

The majority of expulsions in the reign of George I. arose from imperative necessity. When Mr. Pryce refused to attend to take the oaths, and lay *latitating* about the country, and Foster, the member for Northumberland, appeared in arms at the head of a rebel force, the House could not refuse to shake off such guilty members from her communion. Some of the

Nicholls' Epistolary Correspondence of Steele.

<sup>k</sup> Johnson.



sentences, however, that appear to have originated in a horror of corruption, deserve great question. Their severity to Mr. Vernon can scarcely be justified. The honest Sir Joseph Jekyll acquainted the House that "he was directed by the Committee of Secrecy to report an application that had been made to a member of the Committee relating to a matter then depending, and named General Ross," who immediately told his story:<sup>1</sup> "That morning, while at the Committee, he received a note that a gentleman was at the door to speak with him; he went out and found there Thomas Vernon, Esq., the member, who desired him to go into a little room near, whither he went, and Mr. Vernon said that he had something to speak to him, which he desired might go no farther; on which General Ross told him he hoped he had nothing to say to him which might be improper for him to hear; after this, Mr. Vernon told him there was a disposition in the House to be favourable to Mr. Aislachie in the Bill, upon which the House was to be in a committee that day, and that it was in his power to do him service, for which Mr. Aislachie would make him any acknowledgment, and in any manner he should think fit; upon which General Ross, from what he first said, concluding it was upon some corrupt manner, left him in a passion, and thought it his duty to acquaint the Committee of Secrecy therewith. The committee considered it proper to have the matter laid before the House."

To this charge Mr. Vernon was heard in his place, and owned the words and circumstances, declaring at the same time "that he did not mention or intend anything of money, or any other corrupt matter; and

<sup>1</sup> Parliamentary History, vol. vii.

begged the pardon of the gentleman and of the House, if he had committed any offence, as he had uttered the words without any corrupt intention, and only on account of friendship, being nearly related to Mr. Aislalie."

As soon as Mr. Vernon withdrew, it was resolved that he had made a corrupt application to General Ross—that he be for his offence expelled the House. It was also ordered, that their thanks be given to General Ross for the justice he had done to the House and to his country in laying the application before them.

The best apology for this excess of rigour must be drawn from the frenzied state of anger and alarm into which the discovery of the South Sea bubble had thrown the House of Commons and the nation. As soon as they had awakened from their golden visions, and disenchanted themselves from the day-dream of raising 300 millions by chimerical projects, they visited their own folly upon the artificers of that stupendous fraud, and sought, by hard words and vindictive measures, to atone for past infatuation. A secret committee having been appointed to examine the Directors of the South Sea Company, General Ross reported, in language for which we hope his military habits may be held responsible, that "they had already discovered a train of the deepest villany and fraud that hell ever contrived to ruin a nation!" After this preface 'in high Cambyse's vein,' such of the directors as chanced to be members were summoned to attend, and, the doors being locked and keys laid on the table, Mr. Sawbridge, and Sir Theodore Jansen, Sir Robert Chaplin, and Mr. Eyles, were expelled, and ordered to remain in the custody of the serjeant.

But simple expulsion appeared too slight a punishment to satisfy the high-wrought indignation of the House. Though their good sense rejected a clause, which could only have originated in times of senseless panic, for excluding the directors of the South Sea Company, East India Company, and the Bank of England, from being elected members, or sitting and voting in any future parliament (164 members lent themselves to this suicidal proposal) the majority carried with acclamation a bill of pains and penalties, disabling the South Sea Directors from receiving any favour from the Crown, from sitting ever afterwards in either House of Parliament; debarring them from quitting the realm, and forfeiting their estates.<sup>m</sup> By a single statute thirty-six fellow-subjects were cut off at one stroke from the commonwealth, and stripped of the birthright and privileges of Englishmen.

The cynical historian Gibbon, grandson of one of the sufferers, has animadverted keenly on these harsh proceedings, but is not more severe than just.<sup>n</sup> “The legislature restrained the persons of the directors, imposed an exorbitant security for their appearance, and marked their characters with a previous note of ignominy; they were compelled to deliver upon oath the strict value of their estates, and were disabled from making any transfer or alienation of any part of their property. Against a bill of pains and penalties it is the common right of every subject to be heard by his counsel at the bar; they prayed to be heard; their prayer was refused; and their oppressors, who required no evidence, would listen to no defence. It had been at first proposed that one-eighth of their respective estates should be allowed for the future support of

<sup>m</sup> Aislachie's Speech.

<sup>n</sup> Gibbon's Memoirs.

the directors ; but it was speciously urged that, in the various shades of opulence and guilt, such an unequal proportion would be too light for many, and for some might possibly be too heavy. The character and conduct of each man were separately weighed ; but, instead of the calm solemnity of a judicial inquiry, the fortune and honour of thirty-three Englishmen were made the topic of hasty conversation—the sport of a lawless majority. The basest member of a committee, by a malicious word or a silent vote, might indulge his general spleen or personal animosity. Injury was aggravated by insult, and insult was embittered by pleasantry. Allowances of £20, or 1s., were facetiously moved. A vague report that a director had formerly been concerned in another project by which some unknown persons had lost their money, was admitted as a proof of his actual guilt. One man was ruined because he had dropped a foolish speech that his horses should feed on gold ; another, because he was grown so proud, that one day, at the Treasury, he had refused a civil answer to persons much above him. Members were condemned, absent and unheard, in arbitrary fines and forfeitures, which swept away the greatest part of their substance. Such bold oppression can scarcely be shielded by the omnipotence of parliament.”

In extenuation of the vindictiveness thus ably condemned, it should be borne in mind, that the directors, by their active participation, or criminal connivance, in a scheme of gigantic knavery, which advertised 30 per cent. interest for the first two years, and afterwards 50 per cent., were all responsible for the ruin of thousands, and the authors of a popular panic which convulsed the state. Contrasted with the virulence of the petitions, and the intemperance of some leading Whigs,



their retributive sentences would appear scarcely adequate to the enormity of the offence. "Extraordinary crimes," exclaimed Lord Molesworth, "call aloud for extraordinary remedies. The Roman lawgivers had not foreseen the possible existence of a parricide ; but, as soon as the first monster appeared, he was sewed in a sack and cast headlong into the river, and I shall be content to inflict the same treatment on the authors of our present ruin."

The storm of vengeance swept over many, besides the immediate directors. Sir George Caswall, a wealthy banker, who had assisted Government with vast sums of money at 3 per cent. interest, when they could not obtain a loan elsewhere, found past services no safeguard for trafficking in the forbidden bargains of the Alley, was expelled, sent to the Tower, and ordered to refund the princely fortune of £250,000. Ministers came not scathless out of the searching investigation. Lord Sunderland was implicated, but evaded further challenge by resigning ; Charles Stanhope, whose fraudulent transfer of stock had been sought to be concealed, by a miserable attempt at changing the name from Stanhope to Stangape, just caught impunity by a bare majority of three. Craggs was saved from an ignominious sentence by a sudden death, occurring so opportunely as to create a general suspicion that he had fallen by his own hand.

Aislabe, Chancellor of the Exchequer, was less fortunate, and felt the full weight—the *peine forte et dure*,—of national vengeance. He had speculated, contrary to his oath of office, in the funds of the Company, to his own immediate and enormous gain ; had caused a book of accounts to be burnt, which the House required to see, and given a colourable dis-

charge for a supposed balance of £252,000. The burning a book of accounts, and his impudent assertion that he would have burnt it in the faces of the Committee, had they demanded to inspect his private accounts, created such a violent suspicion and universal disgust, that even the subordinates of the Treasury dared not divide against the vote of expulsion.<sup>o</sup> His path to the Tower was illuminated by the bonfires in the City. The estate which he could prove to have had in October, 1718, was spared, but all the subsequent unrighteous gains forfeited. In vain did the unfortunate ex-Chancellor of the Exchequer endeavour to avert the passing of this penal statute by two artful speeches at the bar of the House of Lords, asserting, with sufficient hardihood, "My innocence has been my only screen, and your Lordships' justice is my refuge." Further disclosures, involving him in deeper guilt, were elicited, and the bill became law without a dissentient voice. Its penalties have not been fruitless: a century has passed by without offering up another cabinet-minister to the manes of stock-jobbing.

During the next few years, several more severe examples were necessarily made, for the fever of corruption had burned too fiercely in the veins of the nation to be checked without the use of steel. In 1725, the House dismissed Mr. Elde, member for Stafford, a Master in Chancery, for indirect and corrupt practices in procuring his election; and, in 1730, Sir Robert Sutton, who represented the county of Nottingham, one of the directors of the Charitable Corporation, a swindling company, the principle of whose proceedings, said Fielding, "was a method invented by some very wise men, by which the rich

<sup>o</sup> The Political State.

might be charitable to the poor, and be still money in pocket by it!" The worthy baronet had been imposed upon by the artful representations of more designing men, and duped by the foolish vanity of seeing his name figure among a list of titled and honourable directors. "I knew," said Bishop Warburton,<sup>p</sup> "Sir Robert Sutton's temper and character so well, I do in my conscience believe he had no more suspicion of any fraud carrying on by some in the direction than I had. That he was guilty of negligence as a director is certain, but it was only the natural effect of his temper, which is exceedingly indolent; and he suffered sufficiently for it, not only in his censure, but by the loss of near £20,000." It would be well if county-members in general were to take warning by his fate, and to shun the decoy of directorships when unacquainted with the secretary, and only assured of the soundness of the undertaking by a rhetorical advertisement. Sir Archibald Grant and Serjeant Bond were dismissed the House at the same time for their participation in the affairs of the Company. The last *charitable* director was hitched into rhyme for having exclaimed impatiently, when the sufferings of the poor had been urged against some change that he meditated, "D—n the poor!"

"Than the lowest deep of infamy,  
A lower depth was found."

A Mr. Ward, who had purchased the borough of Weymouth, was, in 1727, prosecuted to conviction by the Duchess of Buckingham for forgery, and in consequence expelled the House, after being required to attend in his place. He absconded, but was afterwards taken, and stood in the pillory, like no common

<sup>p</sup> Warburton's Memoirs.

villain, being attended by footmen in livery,<sup>r</sup> as if in a chair of state. A wealthier felon had never graced that implement of shame, equalling the best (in a mercantile sense) of those who walked the Royal Exchange; for his property was computed at £200,000. Pope, in his *Moral Essays*, declaiming against the worthless distribution of riches, has shown how they were divided among the basest of creation, and allotted to this degraded being his only fitting associates.

“Given to the fool, the mad, the vain, the evil,  
To Ward, to Waters, Chartres, and the Devil!”

The story of guilt of the ex-Member of Parliament is not yet fully told. When the estate of Sir John Blunt had been confiscated to the property of the South Sea Company, by act of parliament, Mr. Ward joined with the knight in a conveyance to secrete £50,000, which was set aside as fraudulent. When his own real estate had been forfeited in consequence of the conviction for felony, he strove to defeat Government by setting up prior conveyances to a brother and son, which a decree in the Court of Chancery annulled. Rather than discover his personalty, he lay in prison, and solaced the languor of confinement with poisoning dogs and cats.<sup>s</sup> Whilst watching the tortures of these poor animals still at his mercy, the ex-Member found the solitude of Newgate not insupportable.

In shaking off the contamination of a wretch like that, the House could exercise no option. Another expulsion under the House of Brunswick, may be justified on the firmest grounds of state policy, that of Mr. Foster, the member for the county of Northumber-

<sup>r</sup> Warton's Notes to Pope.

<sup>s</sup> Warburton's Pope.



land, who led a portion of the rebel army in the rising of 1715, and surrendered himself a prisoner of war at Carlisle. His position in society and rank as officer, appear to have furnished no guarantee against the most ignominious and unworthy treatment. A man of high family, and still member of parliament, he was, says Walter Scott,<sup>t</sup> pinioned with cords, with the other prisoners, at Barnet, like the vilest criminal. A large mob of the patrons of the mug-houses attended, beating upon warming pans!—Halters were put upon the horses ridden by the prisoners, and each man's horse was led by a private soldier. With all sorts of scurrilous abuse and insult, they were led through the city, in this species of disgraceful triumph, and deposited in a gaol. By the connivance of the governor, Mr. Foster shortly effected his escape from Newgate, had relays of horses in readiness, and a vessel waiting for him at Lea, in Essex, which carried him over in safety to Calais. Not dissimilar to this sad and motley procession of vanquished enemies, driven forth with contumely, mustering in their ranks men of high feeling and principle, yet driven side by side with hirelings and common soldiers of fortune, treated alike with the same indiscriminate rigour, may be considered the long train of '*enfants perdus*,' the band of expelled members, who have passed under review, magnanimous as Lord Digby and Mr. Cholmondeley, great statesmen as Sir Robert Walpole, innocent of offence as Steele, corrupt as Guy, utterly depraved as Ward.

The reign of George II. may be deemed inglorious till near its close, but was not unhappy, and had the redeeming virtue of moderation. To the whirlpools and eddies of public life, once boiling over with pas-

<sup>t</sup> Scott's Tales of a Grandfather.

sionate excitement, there had succeeded a dead calm, on whose tideless surface venality and corruption alone floated : the dark passions of revenge and vindictive justice lay buried beneath, twenty fathoms deep. A House of Commons, which had no spirit to debate, and could scarcely find courage to divide, would not visit the sins of its offending members with severity, and discovered that apathy and indifference were less troublesome remedies, because unattended with personal annoyance, than expulsion. The Spartan virtues of the Speaker, Arthur Onslow, vainly appealed to their sense of dignity that they would expel Admiral Byng before he was shot, lest his death by the sentence of the court-martial should cover with disgrace his brother members ;<sup>u</sup> they had not sufficient resolution to save the martyr, and would not take the trouble to expel him.

With the loftier public virtue, and the more stirring events of the reign of George III., a similar spirit of gentleness was interfused ; and it is a memorable fact, that fewer members were expelled during the sixty years of his long reign than in two years of the first of his race.<sup>v</sup> The betrayal of the House, in its struggle with Wilkes, into the erroneous doctrine which the authority of Selden and the precedent of Walpole had established, that the expression of a member must involve the further punishment of exclusion, that incapacity might be pronounced by one branch of the legislature, taught a salutary caution ; and the power of public opinion, which caused a series of resolutions in contravention of the law of parlia-

<sup>u</sup> Horace Walpole's Letters.

<sup>v</sup> The three years infamous for expulsions were 1642, 1680, and 1721.

ment to be erased from their journals, made itself felt and respected in additional temper and moderation, when the tumult of alarm and exasperation of popular fury had passed away. In order that it might retain, the House in future most warily desisted from abusing, its power, and few can question the rare instances in which it was afterwards asserted over guilty members.

In 1796, Colonel Cawthorne having been found guilty by a court-martial of embezzlement, cashiered, and rendered unfit to serve the king in any military capacity whatever, was expelled for his said offence, as an unfit person to hold a seat in parliament, 108 members against 12 voting this resolution.<sup>x</sup> Sixteen years later, in 1812, Benjamin Walsh, a stock-jobber, having been convicted at the Old Bailey of a fraud upon Sir Thomas Plomer, met with the same fate;<sup>y</sup> the plea, in mitigation, that he had paid 4000 guineas for his seat for Wooton Bassett, not availing to save him, notwithstanding the wishes and recorded opinions of Sir Samuel Romilly. "I thought it extremely dangerous," he states in his diary, "that the House should assume to itself a power of expelling any of its members merely on the ground of their having been guilty of gross immorality. Such a censorial power cannot be intrusted to a popular assembly, acting, as it often necessarily must act, under the influence of political prejudice, without being liable to the greatest abuse."<sup>z</sup> That this is no theoretical danger the journals of the House abundantly prove; but the moral necessity of freeing a body of gentlemen, whose

<sup>x</sup> Parliamentary History, vol. xxxiv.

<sup>y</sup> Parliamentary Debates, vol. xv.

<sup>z</sup> Memoirs of Sir S. Romilly, vol. ii.

power rests on public respect, from the contagion attaching to the presence of proved delinquents, confessed libellers, convicted felons, outweighs this danger. It is a power obnoxious to, and made a vehicle of abuse, but still a power which, in the nervous language of Dr. Johnson,<sup>a</sup> “necessity made just, and precedents have made legal. When wickedness arrives at a certain magnitude, an offence against society may be considered as an offence against the House. They have therefore divested notorious delinquents of their legislative character, and delivered them up to shame and punishment, naked and unprotected, that they might not contaminate the dignity of parliament.”

From these motives, in 1814, Lord Cochrane, upon his conviction for a conspiracy to commit a fraud on the Stock Exchange, was expelled, but re-elected for Westminster. He had met with a hard measure of justice, and, under feelings of strong and pardonable resentment, moved an impeachment against his severe judge, Lord Ellenborough.<sup>b</sup> He found a seconder in Sir Francis Burdett, his colleague, but none besides. Thirty years have happily since intervened without a similar infliction. The House, as a body of gentlemen, have become tender of the honour of gentlemen. The power to expel remains as undoubted as the exercise of it should be rare.

One indignity which placed members and strangers alike under the servile yoke, lingered till the middle of the last century—the odious form of compelling all parties to hear their sentence “meekly kneeling upon

<sup>a</sup> Dr. Johnson's False Alarm.

<sup>b</sup> Parliamentary Debates, vol. xviii.



their knees." A long and dark series of precedents established, that all must learn their doom, and in some cases receive their charge, on their knees. There was, indeed, a single noble exception, that of the loyal patriot, the sturdy Welch judge, David Jenkins, who absolutely refused to kneel, and harangued the Speaker in language that made his hearers quail.<sup>c</sup> "Mr. Speaker, since you and this House have renounced all your duty and allegiance to your Sovereign, and natural liege lord the King, and are become a den of thieves, should I bow myself in this house of Rimmon, the Lord would not pardon me in this thing." The House, we are told, fell into such an uproar upon hearing this cartel of defiance, that for half an hour they could not be reduced into any order, sometimes ten, sometimes twenty, were speaking together. The malignant was voted guilty of treason without trial, and sentenced to die; but Harry Martin averted his fate by good-humouredly moving that the House would suspend the day of execution, and in the mean time force him to live in spite of his teeth.

After the interval of a century, during which all offenders, real or supposed, against the majesty of Parliament, had continued to kneel without open resistance, a similar scene of rage was re-enacted in February, 1751, on the peremptory refusal of Mr. Alexander Murray, brother of Lord Elibank, to kneel at the bar to receive his sentence. He was charged with having, during the late Westminster election, incited the High Bailiff, saying, "Will nobody knock the dog down?"<sup>d</sup> but the words were not satisfactorily proved, and Mr. Murray persisted in denying that he had ever

<sup>c</sup> Parliamentary History, vol. x.

<sup>d</sup> Petyt's Parliamentaria.

uttered them. The House, however, acted on the complaint of the returning officer, and resolved that he should be committed to Newgate, and receive his sentence on his knees—an indignity to which he peremptorily declared nothing on earth should ever induce him to submit. In vain did Mr. Pelham explain that kneeling was no acknowledgment of guilt, but only a testimony of respect: in vain did the Speaker, horrified at his insubordination, exclaim in his deepest tones of displeasure, “On your knees, Sir! you must kneel down.”<sup>c</sup> Mr. Murray persisted in standing, and the sentence could not be spoken. The House, in a tumult of indignation at such contumacy, resolved, “That Mr. Murray, having in a most insolent and audacious manner, at the bar, absolutely refused to be upon his knees, is guilty of a high and most dangerous contempt of the authority and privilege of this House.”

If bitter words and strong epithets could have availed ‘to whip the rebellious Adam out of him,’ these resolutions might perhaps have sufficed. The Speaker strongly urged ulterior measures, insisting that, if insubordination of this alarming character were to pass without exemplary chastisement, all respect to his authority was at an end. It was therefore ordered that Mr. Murray should be committed close prisoner to Newgate, and that no one should have access to him without leave—that he should not have the use of pen, ink, or paper, and that a committee should consider and report what further methods might be taken. As the rack and thumb-screws were abolished, and the power of inquisitors “before torture, between torture, in torture, and after torture,” had passed away

<sup>c</sup> Horace Walpole’s Letters.

for ever ; as the House could no longer impoverish by fine, or add hard labour to imprisonment, no further or more effectual remedy than duress could be devised. The prisoner lingered in Newgate four months, till the prorogation in June, with spirit unbroken.

As soon as the gates of his prison were thrown open by the rising of parliament, he made a triumphant cavalcade along the streets of the metropolis, amid the cheers and huzzas of the populace. As the natural effect of persecution, a lately despised Jacobite became the idol of the hour. This popularity was remembered to his prejudice by a vindictive House of Commons, who, as soon as they met in November, on the motion of Lord Coke,<sup>f</sup> voted that he should be re-committed to Newgate, and receive the sentence of re-committal on his knees. But the bird was flown. Mr. Murray had prudently withdrawn to the continent. A reward of £500 was proclaimed by the Privy Council, at the instigation of the House, for his apprehension. Public feeling revolted at the violence of this persecution ; his enemies became in time ashamed of their intolerance, and Mr. Murray had the consolation of learning that, by his firmness and sufferings, an end was silently put to a practice which, with reptile tenacity of life, had lingered for centuries. The name of the wag ought to be known, who had previously expressed his indignation by rubbing his knees, after rising from the bar, and exclaiming with an excusable *double-entendre*, “ ‘This is the dirtiest house I was ever in during the whole course of my life.’ ”

The necessity for kneeling, after having been silently abrogated in practice for twenty years, was at length abolished by a standing order. “ ‘When any

<sup>f</sup> Parliamentary History, vol. x.

person," Mr. Hatsell writes,<sup>g</sup> "is brought to the bar as a delinquent, to receive judgment of committal, or any other punishment, such person, till the standing order of 1772, must have received the orders of the House upon his knees. The alteration made by that order was suggested by the humanity of the House, [their humanity, however, required much flapping to awaken it], who often have occasion to inflict punishment on persons, who would be more sensibly affected by this ignominious manner of receiving their sentence, than by the severest species of penalty the House can inflict."

The rule had been sometimes waived in favour of particular persons, as Mr. Martyn, Colonel Wanklyn, but the only grace worthy the assembly of British gentlemen was that which abolished the prostration altogether. Before the House of Lords, when impeached by the Commons, the culprit, of whatever age or rank, is still enforced to kneel. An eye-witness has recorded the strong sense of disgust which this compulsory humiliation produced in the feelings of a gentleman. When Miss Burney complained to Mr. Windham of Warren Hastings kneeling at the bar—" 'Tis a humiliation," he said,<sup>h</sup> "not to be wished or defended; it is indeed a mere ceremony—a mere formality, but it is a mortifying one, and so obsolete, so unlike the practices of the times, so repugnant from a gentleman to a gentleman, that I myself looked another way. It hurt me, and I wished it dispensed with."

Impeachments are now regarded as themes merely of rhetoric, to round a period of oratorical invective;

<sup>g</sup> Precedents, vol. iii.

<sup>h</sup> Madame D'Arblay's Diary.



but, should the spectacle ever be revived in Westminster Hall, we may express a sanguine conviction that no English gentleman will feel constrained to avert his head in pity from the criminal, but that the ceremony of kneeling to receive his charge will no more be required from the accused than his performance of the Chinese *kotow*.

## CHAPTER VI.

THE Convention Parliament 'used their spiriting gently.' They threatened, it is true, with all the engines of vindictive power, but were sparing of extreme punishment, and innocent of shedding blood. A few persons were excepted by name out of the Bill of Indemnity, twenty-six in number, including all those in actual rebellion against their majesties who were attainted; and a bill was introduced, but never carried through, for inflicting pains and penalties "on such persons, as had been the occasion of violating the laws and liberties in the last two reigns." Only one member was expelled, and three more discharged; they directed very few prosecutions to the attorney-general; among them that of a cruel miscreant, Mr. Richardson, the keeper of Newgate, for his illegal usage of several of the king's subjects under imprisonment. Their treatment of the judges, who presided over the legal iniquities of the two preceding reigns, has been severely censured,<sup>a</sup> with more severity, perhaps, than the very peculiar occasion called for.

Their noted serjeant-at-arms, John Topham, was served with notice of several actions of trespass, at the suit of persons whom he had taken into custody

<sup>a</sup> Lord Ellenborough in the case of *Burdett v. Abbot*.

by order of the House. His pleading their orders in justification had been overruled, and he petitioned the Convention. They resolved, that the judgments in the King's Bench against Topham were illegal, a violation of their privileges, and pernicious to the rights of parliament; and ordered, that the three surviving judges, Sir F. Pemberton, Sir T. Jones, and Sir F. Wythens, should attend at the bar. The first judge, being desired to give his reasons, answered, as a lawyer, that, though he remembered little of the case, if the defendant pleaded he did arrest the plaintiff by order of the House of Commons, and should plead that to the jurisdiction of the Queen's Bench, he thought, with submission, he could satisfy the House, that such a plea ought to be overruled; that he took the law to be so very clearly. This, undeniably, must be deemed a sound exposition of the law; but the House resolved, that the law of parliament supervened it, and declared that the orders and proceedings of that House, being pleaded to the jurisdiction of the Court of Queen's Bench, ought not to be overruled. Mistaken in their view of the law, and supposing, erroneously, the conduct of the judges to have been illegal, they ordered, with no excess of punishment on the hypothesis that their interpretation of the law was correct, the ex-judges into the custody of the serjeant-at-arms.

Their conduct during the sanguinary close of Charles the Second's reign, had not been such as to raise a *prestige* in their favour. Jones had been the presiding judge at the trial of Margaret Gaunt, the ermined executioner who adjudged an innocent woman to the flames. It was Pemberton who had presided at the sacrifice of Lord Russell, the proceedings in which

had lately been branded with an act of parliamentary reversal, whilst Wythens had stooped to act as tool to that chief justice, whose name and cruelties will bear no epithet.

Though, in this particular instance, the Commons were betrayed into illegal severity, they acted sincerely, according to their honest convictions; and, bearing in mind what they knew and remembered of the magisterial delinquents, there is almost as much room to admire the forbearance of the Convention as to condemn their rigour. To their eternal praise be it recorded, they would not dabble in blood. The prisons were full of capital offenders; the chier miscreant, Jeffries himself, ensanguined as in a scarlet robe, lay at their mercy in the Tower; within their own walls sat Sawyer, and Williams, and Finch, the persecutors to death of Armstrong and Sidney—the blatant revilers of the bishops. The west was yet warm with the flushings of the lawyer's campaign; the church had scarcely laid aside mourning for its Protestant martyrs. Westminster Hall could not easily reckon up the number of its victims; the halls of Oxford were not yet purified from recent desecration. The committee of civil grievances had to report a black catalogue of offences: the rights of the city of London in the election of sheriffs invaded; the judgments against corporations; illegal dispensings with tests; levying of money otherwise than the law allowed; the disarming of Protestants;<sup>b</sup> the quartering of soldiers contrary to law—all tending to the overthrow of the established Church, and the imposition of papal tyranny.

Acts of retributive vengeance, hot and hasty coun-

<sup>b</sup> Journals, vol. x.



sels, might have been anticipated. Mr. How's suggestion, for instance; "as for offenders, I would shake them off gently from my hand like a viper; but when it is upon the ground I would tread upon it, and destroy it, that it may hurt no more;" and Harbord's motion, that "two of the judges, according to the notable example of the head justice, who was executed at Tyburn in Richard the Second's time, might be for a present example hanged at Westminster Hall gate."<sup>c</sup> But such intemperate folly met with no encouragement from the calm and element wisdom of the Convention. Earnestly adopting the merciful recommendation of the king to prepare an Act of Free and General Pardon, Indemnity, and Oblivion, with such exceptions only as should seem necessary for the vindication of public justice, and the safety of the crown, they first defined the criminal acts for which guilty parties were to be excepted from this healing statute, and then named the parties.

With that modern gentleness of spirit which might best quiet an uneasy nation, they named as few to be excepted as the nature of the case could possibly bear: first, and foremost, the capital offender, Jeffries, the late head of the law, who had sought to destroy law, and had escaped by death from just retribution. He was excepted, however, that an attainder might fall upon his head, but even this act of attainder perished. Chief Justice Herbert, then abroad with King James, who had advised his dispensing power, and a few other names, were included. Others were excepted as to pains and penalties, not extending to life. The parliament justified Sir Thomas Smith's observation, that no nation was less fearful of death, or more afraid of

<sup>c</sup> Parliamentary History, vol. v.

torments than the English. Sir William Williams, on account of his sufferings as speaker, escaped by a narrow majority from being excepted. Laying aside, in a great degree, their extraordinary powers of vengeance, they proceeded by the accustomed methods of legislation, and even failed in perfecting several legislative measures of redress to the innocent, when their passing involved the punishment of the guilty. Acts of parliament obtained the royal assent to reverse the attainders of Lord Russell and Sir T. Armstrong, but a bill to make reparation to his widow and children out of the estates of the judges and prosecutors failed. A bill for the forfeiture of the estate and honours of George, late Lord Jeffries, proved also abortive.<sup>d</sup>

The tainted profession of the law, from their sleath hounds, the crown officers, to the persevering beagles, the government attorneys, escaped too easily. Though but few of the judges could clear themselves at the bar, when summoned to explain their advice upon King James's dispensing power, they were ushered to the House, attended by several members on the score of judicial merit or private worth, and were suffered to retire without any vote of censure. The number of men of the long robe in the House, and their *esprit du corps* might partly account for this. "Touch a lawyer," said Waller, "and all the lawyers will squeak."<sup>e</sup> Major Wildman reported from the committee appointed to inspect the accounts of Burton and Graham, that they were employed in almost all the illegal prosecutions of the last eight years; that from the year 1678 to 1688 they had received out of the exchequer, for crown prosecutions, £43,554; that they had expended in prosecuting Dr. Oates £3037 : 9 : 0; the

<sup>d</sup> Journals, vol. x.

<sup>e</sup> Parliamentary History, vol. v.

seven Bishops, £183:0:0; and had expended several sums contrary to the laws of the land, as three and five guineas a-piece to Middlesex jurymen, and in treating them with sometimes £25, sometimes £40, and sometimes £50, besides unwarrantable fees to sheriffs. Yet these mischievous subalterns, after being committed to the custody of the serjeant, that they might not be bailed from the Tower by the King's Bench, and intrusted to the attorney-general to prosecute, finally escaped the chastisement they so richly merited. This over-lenity might be censurable, but it was a failing, that 'lean'd to virtue's side,' and is not to be deprecated for its mischievous example, as this is not the fault, judging from the previous and subsequent records of the House, to which large bodies of men are peculiarly prone.

As a striking contrast to the praiseworthy forbearance of the Convention, as a proof how much the national representatives had improved in tone and temper, as a warning against the contagious tyranny of an assembly, it may be well to look back upon the excesses in severity of the Long Parliament, and see to what extravagance of rigour their vindictive privileges had formerly been strained. The parliament which met in November 1640 appear to have been inoculated with as extravagant notions of their unlimited summary power as the Quixotic member who assured Coleridge that he for one would not shrink from affirming that, if the House of Commons chose to burn one of their own body in the Palace Yard, it had an inherent right and power by the constitution to do so. But, not satisfied with tyrannizing over their own members, they summoned at will any subject in the realm before their arbitrary tribunal. Under

pretence of broken privileges, and making whatever displeased themselves a grievance, they exercised unmitigated despotism. One Shawbridge was brought to their bar for calling Mr. Pim, King Pim, and rascal: for this offence he was fined £100, and ordered to the Gate House till he paid. Dr. Eddie was disqualified from holding any benefice, for having among other offences spoken words "that are very scandalous words against the parliament."

The journals for the next few years, perturbed with wars and rumours of wars, prove that the House had no tender mercies, either for their own body or for strangers. In 1642, it was resolved that a book by Sir Edward Deering, a collection of speeches, is against the honour and privileges of this House, and scandalous to the House, and shall be burnt by the common hangman; himself be disabled from sitting, and committed to the Tower; and that a new writ shall issue. March 9, 1642, Mr. Trelawney, a member, is disabled to sit, and a new writ ordered for Plymouth, on account of words accidentally spoken out of the House.

None held their heads so low as to escape the bolt of vengeance. Certain fiddlers were sent, in the same year, to the house of correction, for singing a song against the Parliament, in Gracious-street.<sup>f</sup> A poor man was committed to safe custody for saying "He never knew or heard of a parliament that did proceed so basely." The Lords afterwards sentenced this truth-telling person to undergo a fine, the pillory, and Newgate, and to find sureties.

In the fulness of their usurpations upon the ex-

<sup>f</sup> There is a collection from the Journals in Lister's Life of Lord Clarendon.



ecutive, the speaker, Sir John Lenthall, received orders to lay irons upon such prisoners in the King's Bench as showed themselves disorderly and mutinous. Mr. Baldwin, minister of Hampstead, was committed to the Gate House for erroneous doctrine. They sanctioned robbery by law under the guise of an ordinance. In April, 1644, books to the value of £100 were ordered to be delivered to Mr. Peters out of the parlour and private study of the Archbishop of Canterbury. On the same arbitrary principle of spoliation, all the books and manuscripts belonging to Edward Lord Lyttleton wherever found, were directed to be bestowed upon Bulstrode Whitelocke, Esq., a member.

These ordinances extended even to the taking away of life. In 1646, the Commons make an ordinance for punishing Paul Best with death by hanging, for obstinate and blasphemous denial of the Holy Trinity. Not a secret whisper of disaffection was permitted to escape. An attachment was voted against Mr. Wooton, fellow of Trinity College, Cambridge, who had said "the rebellion of the Parliament was worse than the rebellion of Ireland." He was ordered to be expelled the college, disabled as a fellow, and from ever holding any preferment, or residing in the university. The Commons, in their vindictiveness, made war even with the tombs. It was resolved, as if in sportive despotism, "that the monuments erected in Christ Church, Oxford, for Sir William Penyman and Sir H. Gage, should be defaced and demolished, and likewise all others there scandalous or reproachful to the Parliament, or the proceedings thereof." They usurped from the king his prerogative of arbitrary commitment, and im-

prisoned every Englishman whom a popular member might select at his caprice. Sir William Earle having given information of some dangerous words spoken by certain persons (not named), the speaker was ordered to issue a warrant to apprehend *such persons as Sir William should point out.*<sup>5</sup>

They despoiled the Star Chamber of their power over libels, exhausted the old penalties, substituting slavery and death for mutilation, and invented new. They trampled on the privileges of the upper house, and impeached the Duke of Richmond, for saying sarcastically to his brother peers, as well he might, on a proposition to adjourn, "Why should we not adjourn for six months?" They impeached the twelve bishops for protesting against the validity of measures passed in parliament during their compulsory absence, as they had a perfect constitutional right to enter their protest, even though their exercise of it might be questioned. They suppressed the House of Convocation, more ancient than their own, and fined the members for making canons, which they had full authority to make. They spurned the petitions of the people, imprisoned the petitioners, who dared to vent a prayer against perpetual innovation, and spoiled their goods. One Josiah Pinnett, having presented a petition, complaining that Sir Arthur Haslerig had violently dispossessed him of some collieries, the House, after voting every part of the petition to be false, adjudged him to pay a fine of £3000 to the Commonweal, and £2000 more to the lucky knight, who led a dominant party of puritans in the House. The council of 300 never committed more wanton excesses of tyranny : the sceptre of the most imperious

<sup>5</sup> Lister's Lord Clarendon.

Tudor who strode over the rights of Englishmen, never weighed so heavily as the serjeant's mace of the Long Parliament : more exacting in their demands of tribute money than the Norman, at least as irrespective of chartered liberties as the Stuart. " These were your gods, O Israel ! "

In contrast with this suicidal parliament, how gloriously is reflected the calm wisdom of the Convention, never straining privileges, nor mimicking the despot they had overthrown ! Privilege with the one was a radiant light, with the other a consuming fire : a beacon blaze in the Convention, to guide the course of public men in safety through a new and dangerous channel ; a wrecker's false flame in the Long Parliament, that they might plunder the wreck by luring the vessel of the State among the breakers. The moderation of the one was crowned with a safe, a bloodless, a complete deliverance ;<sup>h</sup> the fury of the other pulled down the temple where they sat, and exposed their undoubted privileges to danger. We propose to consider those vindictive remedies against offending strangers in the first instance, to which the House has an undisputed claim.

The grand inquest of the nation exercises an unquestionable right of commitment over all witnesses, who, by refusing to answer, or by giving equivocating testimony, are guilty of a contempt. Without this summary power, and the special sanction of administering an oath, they could not examine effectually into the validity of returns of members, and retain for their own adjudication the trial of controverted elections. So far back as the reign of Elizabeth, the Commons asserted, most probably for

<sup>h</sup> Bishop Hurd's Dialogues between Maynard and Somers.

the first time, this, one of their most important privileges, the right of determining all matters relative to their own elections, superseding the writs out of Chancery, and disburdening themselves from the interference of the Crown.

Before these first stirrings of freedom, upon a false return by the sheriff, there was no remedy but through the king, or his council, so unavailing, in fact, that six instances only occur during the reigns of the Plantagenets, wherein the misconduct or mistake of the sheriff is recorded to have called for a specific animadversion. In the roll of 18 Henry VI., it is considered by the king, with the advice and assent of the lords, spiritual and temporal, that, whereas no knights have been returned for Cambridgeshire, the sheriff shall be directed by another writ to hold a court, and to proceed to an election, proclaiming that no person shall come armed, nor any tumultuous proceeding take place.<sup>i</sup> The Commons were not even named in this entry.

In James Ist's reign Sir Edward Coke vindicated the tribunal of parliament, as including beyond doubt or question all matters connected with elections, and all petitions relating to returns of members, not suffering the question to be mooted, though their king, "as an absolute king," commanded obedience. They began to place obnoxious candidates and offending burgesses upon the rack. In 1623, one Lovel pretended to be duly chosen for the borough of Bletchingley.<sup>k</sup> The committee reported that "his mother was a recusant, his brother a priest, and his daughter a nun;" of course, with such relations, he could not be entitled to a majority of legal votes. He was ordered

Hallam's Middle Ages.      <sup>k</sup> Burgh's Political Disquisitions.



to be set by as a man incapable of election. He was ordered also to be committed to the Tower, and still more arbitrarily that "he come to the bar upon his knees."

There is a tendency to rigour too often visible in a popular assembly liable to be swayed by sudden impulses of prejudice or excess. Pleased with the exercise of their plenary power of commitment, the Commons showed at first a praiseworthy vigilance in ordering into the custody of their officer, sheriffs and mayors, who delayed making returns to the writ, or evinced partiality in the performance of their functions, as returning officers. On a disputed election for Westminster, in 1708, the high bailiff having arbitrarily refused to tender the oath of abjuration, when required so to do, was ordered to be committed to Newgate.<sup>1</sup> The Mayor of Liverpool was, by a similar exercise of salutary rigour, detained in prison from January 11 to February 21, for making a false return.<sup>m</sup> The unlucky Mayor of Oakhampton, being unable to read or write, was induced by misrepresentation to put his mark to the wrong indenture of return, and lay in prison for his want of scholarship. Woe to the luckless wight who could not plead his benefit of clergy!

But this trick of dealing with the persons of corporate officers occasionally betrayed the House into unconstitutional excess. The mayor and aldermen of Carlisle were brought to the bar, and received a reprimand on their knees, for depriving Sir Charles Musgrave of the freedom of their borough and city. The House, usurping an authority to which they had not the shadow of constitutional right, commanded

<sup>1</sup> Journals, vol. xiii.

<sup>m</sup> Journals, vol. xiv.

that he should be forthwith restored to his freedom. Had the knight's right to vote been tried by a quo warranto in the Court of Queen's Bench, Chief Justice Holt would soon have taught the tyrannizing Commons, that their mandates were not paramount to the laws of the land.

In dealing with doubtful returns and election petitions, both in punishing frivolous and denouncing disagreeable prayers, the committees often reeled under their plenary power. In 1695, Sir Richard Gipps was ordered into custody and to pay all expenses, for preferring a frivolous petition against the return of Sir Edward Seymour for Totness, the case being one of extreme nicety. A more flagrant act of injustice was perpetrated against Sir George Meggott, an obnoxious petitioner to the majority against the return for Southwark. Two witnesses having deposed to his uttering a foolish boast, that he would retain his seat in the House he had so many friends there; be the real majority what it might, he was detained in the custody of the serjeant to the close of the session. As he denied indignantly having uttered the words imputed to him, he brought an action of slander against his accusers. The moment parliament re-assembled, a complaint was urged against the knight for committing a breach of privilege in commencing the action. In vain his counsel submitted to the committee of elections, that he had suffered himself to be non-prossed (the legal jargon for discontinuing an action) as soon as he had ascertained that to bring such action might be adjudged a breach of privilege, had paid all the costs of defendants, and was sorry if he had unwittingly offended.<sup>n</sup> The

<sup>n</sup> Journals, vol. xv.

committee treated with contempt the very sensible suggestion, that as the witnesses had not been examined upon oath, and were not liable to be indicted for perjury, great inconvenience must necessarily accrue, if there was no way to punish them for any false testimony they might give. The House resolved, that Sir George Meggott was guilty of a breach of privilege, in having prosecuted at law the two adverse witnesses, and was again ordered into the custody of the serjeant. The most ardent lovers of privilege must allow that, not being permitted to establish his innocence, the incarcerated knight had a hard measure of House of Commons' justice dealt out to him.

Their treatment of Ashby, the cobbler of Aylesbury, bringing an action against the constables, the returning officers, who refused his vote, is still more abominable. The Commons of England would not permit a freeholder, unjustly denied his vote, to assert his right by an action at law, and recover damages for the injury: they sought to deprive the subject of the means to vindicate a legal demand of justice by threatening all the vengeance of their persecuting power upon the officers and others concerned in that great cause. They menaced with Newgate the independent lawyers, who persevered in pleading, and, when the Court of Queen's Bench had directed judgment to be entered for the defendants, denied that a writ of error lay. It must be confessed that a diligent inspection of the journals will not tend to fill the student with an ardent admiration of the vindictive privileges of parliament, even in these topics of election and petition peculiarly within their cognizance and properly subject to their jurisdiction. But when we pass to the many instances of arbitrary commit-

ments, and party prosecutions, and capricious acts of tyranny, creating the breach of privilege, by an arbitrary vote, without assigning reasons, we shall see abundant cause to watch with extreme vigilance the assaults of irresponsible legislators on constitutional rights, and to rejoice in the belief that the rage of extending privilege is past. It is a subject of lasting congratulation to Englishmen that the honest artizan did recover judgment—did issue execution and obtain damages in defiance of the thunders of the Commons, ‘which kept such a pother over his head.’

When five other electors, encouraged by his success, brought their actions to recover compensation for similar wrongs, they were imprisoned in Newgate for twelve weeks for pursuing their legal remedy against the returning officer, who had refused their votes. Their crime was claiming redress at law for a legal injury. Well might Sir Edward Seymour, in his profane way of talking, ° say once in the House—“If the Lord should be extreme to mark what was done amiss by us in the matter of elections here, Mr. Speaker, the Lord have mercy upon us all.”

A review of their treatment of petitioners, on general subjects, will not tend to reconcile us to the manner in which the House have exercised these indefensible privileges. In the year 1679, when Oates and Dangerfield, and other such worthies, encouraged by the Commons, were maddening the nation with their monstrous fictions, Charles prorogued the parliament. Shaftesbury and the popular leaders got up petitions to the king to assemble it. The loyalists met them with counter-addresses to the king, expressing their reliance on his wisdom, and their abhorrence of the practices of the petitioners; and the



people were divided into petitioners and abhorrrers. It should seem, according to the modern notion of constitutional rights, that either party had an equal liberty to express their opinions upon political affairs ; but, when the parliament met, a majority of the Commons voted the proceedings of the abhorrrers to be a breach of their privileges, and seized and committed to prison great numbers of them from all parts of England.<sup>p</sup> “ Scarce a day passed,” says Ralph, “ but some abhorrrer was dragged before them and committed to the custody of the serjeant-at-arms, at the pleasure of the House. And this strange despotism they exercised with so much wantonness as well as cruelty, that Mr. Tropy was pleased to say, they kept a hawk (meaning the said serjeant), and they must every day provide flesh for him. And the quantity he was this session gorged with, gave rise to this proverb, ‘ Take him, Topham,’ in all discourse of peremptory commitments.”

But in this, it appeared by the event, they acted with as little policy as justice. It had not been usual to force gentlemen from their habitations in the country, to answer for their conduct on juries at the bar of their own representatives ; and it began at last to grow into a common question, shall they who are intrusted to defend the liberties of the people against all arbitrary power whatsoever, take away those liberties ? Thus, at the same time that they grew terrible, they grew odious ; and, no sooner did they lose the affections of the public, than the prerogative became too strong for them, and a general disposition appeared to submit rather to the will and pleasure of one, than to the tyranny of many.

The people discovered that a popular assembly,

<sup>p</sup> Mr. Pemberton's Pamphlet.

acting with an *esprit du corps*, and yielding to its fears or passions, might become more dangerous than the crown to the rights and liberties of the people. One resolute Englishman caused this band of tyrants to shrink back, with almost ludicrous haste, from their ill-advised and arbitrary proceedings. They had ordered Mr. Stowell, of Exeter, who, as foreman of the grand jury of that city, had signed and forwarded an abhorrence, into custody of the serjeant; but he, with a proper spirit, refused to submit, and the Commons did not venture to prosecute any further proceedings against him. They adopted the mean and miserable subterfuge of voting him ill and respiting his arrest.

The case of the Kentish petitioners in 1701 forms an exact counterpart to that of the abhorrrers, and even exceeds it in the lawless character of the vindictive measures that were taken. A large portion of the nation were irritated against the House for their factious disputes with the Lords, some of whom they impeached without proceeding in the impeachment, and for their unreasonable jealousies of the king. The leading gentry of Kent discussed these grievances at the Maidstone Easter Sessions, and drew up a petition, expressing their hope "that no pretence whatsoever shall be able to create a misunderstanding among ourselves, or the least distrust of his most sacred Majesty, whose great actions for this nation are writ in the hearts of his subjects, and can never, without the blackest ingratitude, be forgotten. We most humbly implore this honourable House to have regard to the voice of the people, that our religion and safety may be effectually provided for—that your loyal address may be turned into bills of supply—and that his most sacred Majesty (whose prosperous and unblem-

ished reign over us we pray God long to continue) may be enabled powerfully to assist his allies before it is too late, and your petitioners shall ever pray," &c.

This petition, respectfully worded, though most obnoxious for its covert sarcasm and ungracious panegyric on the Monarch, was drawn up by Mr. William Colepepper, the chairman, and signed by twenty-three of his brother magistrates, twenty-one of the grand jury, and a number of freeholders, whose signatures, in five hours, completely covered the parchment. Five of the leading gentry of the county repaired to the House with their petition. As they were waiting in the lobby, Mr. Meredith, one of the county members, came out and informed them of the extraordinary excitement into which its arrival had thrown the House, Mr. How saying, if there were 100,000 hands to this petition they should be all made examples of, and Sir Edward Seymour threatening that the whole county should be doubly taxed, and the estates of those who presented the petition confiscated to the use of the war. The country gentlemen stood their ground undaunted. Their leader, Colepepper, applied to himself the saying of Luther to those who would have dissuaded him from entering Worms, "that if every tile on the roof of the chapel of St. Stephen's were a devil he would present this petition—that if none of the members would do their country so much service as to present their grievances to Parliament, embodied in a legal petition, they would knock at the door of the House, and deliver it themselves." A member having at length ventured to rise with the obnoxious document, the speaker declared that it was the usage of the House, when a petition was presented, that the persons who brought

it ought to be ready with it to justify its contents. The little band of patriots were accordingly called to the bar and addressed by the speaker, Mr. Harley, as the short narrative of the petition informs us, 'in his wonted tone of haughtiness.' The following dialogue ensued:<sup>a</sup>

*Speaker.* — Gentlemen, is this your petition? (Holding it up by one corner.)

*Gentlemen.* — Yes, Mr. Speaker — (bowing very respectfully).

*Speaker.* — And, Gentlemen, you own this petition?

*Gentlemen.* — Yes, Sir, we do.

*Speaker.* — (Turning to one of the clerks) — Carry it to them, and see if they will own their hands. — (Which they severally did.)

*Speaker.* — Withdraw, and expect the order of the House.

After this threatening prologue they were detained in the lobby five hours, and their fears played upon by a message from Sir Edward Seymour, that Mr. How was then speaking, and would continue to speak for some time, to give them time for repentance, and by a timely acknowledgment save themselves from ruin. The House, finding at length that the petitioners were not to be subdued by menaces, "resolved, that their petition was scandalous, insolent, and seditious, tending to destroy the constitution of parliament, and to subvert the established government of these realms." As a natural sequel to this fiery resolution, the House ordered that the petitioners be committed to Newgate, where they lingered till the prorogation, on June 23, a period of two months.

<sup>a</sup> Case of Petitioners, by Defoe.



We cannot help pausing at this violent infringement of the liberties of Englishmen, to wonder over the apathy that then prevailed.

Thanks to the more rapid conveyance of intelligence, and the more just notions of freedom which prevail, the whole nation would rise as one man, were such an act of daring tyranny attempted now, and block up the House with demands of liberation. But the most bigoted champion of privilege could not dream of such Quixotry in the present day. The people, quiescent as they then were, displayed lively tokens of joy at the release of their imprisoned patriots: they were met at Blackheath by above 500 gentlemen of the county on horseback, who escorted them in triumphant procession to Maidstone, where the way was strewed with flowers before them. The grand jury, at the assizes, thanked them in the name of the county. The Company of Mercers invited them to a sumptuous banquet: their names became the popular toasts of the day.

But the vindictive spirit of the House of Commons, still implacable, 'and hushed in grim repose,' waited patiently for its prey. A new parliament having been summoned, Mr. William Colepepper stood for the county of Kent, with such favour that he polled 1600 plumpers against a popular candidate, Sir George Rooke. His brother was less fortunate; having also contested Maidstone, and polled 337 votes against 339, he was deluded by the smallness of his minority to present a petition against the return, and dreamt, presumptuous man, of obtaining justice. The committee immediately entered on the inquiry with all the reckless fury of intemperate partizans, and examined witnesses, not to try the merits of his

election-petition, but that they might criminate the fool-hardy petitioner. The House agreed with its committee in their virulent resolutions, "that Thomas Colepepper (who was one of the instruments in promoting and presenting the scandalous, insolent, and seditious petition, commonly called the Kentish petition to the last House of Commons) hath been guilty of corrupt, scandalous, and indirect practices, in endeavouring to procure himself to be elected a Burgess; to serve in this present parliament for the borough of Maidstone:—Resolved, that the aspersing the last House of Commons, or any members thereof, with receiving French money, or being in the interest of France, was a scandalous, villainous, and groundless reflection tending to sedition, and to create a misunderstanding between the king and his people,—Resolved, that Thomas Colepepper is guilty of promoting the said scandalous, villainous, and groundless reflections upon the said House of Commons.—Ordered, that Thomas Colepepper be committed to Newgate.—Ordered, that an address to the queen be presented, that she would direct a prosecution by the attorney-general."

Had his judges used language somewhat less angry and acrimonious, they might have obtained credit for a dispassionate judgment, but in these resolutions the rancorous public prosecutor is disclosed, the temperate judge forgotten. Mr. Colepepper having absconded, a further address was voted to the king, to issue his royal proclamation for apprehending the fugitive. He surrendered, and was consigned by the persevering resentment of the House to Newgate, where he lay till November in the following year, when, his spirit being broken, and seeing no probable

end to his confinement, he once again petitioned the House, acknowledging that he had given just cause of offence, and praying that the House would interpose with her Majesty, to give orders to her attorney-general, to surcease further proceedings in the prosecution against him. It was ordered that he should be called to the bar, and asked whether he was sorry for his several scandalous and seditious practices against the honour and privileges of the House. He answered, as well he might for the consequences, that he was very sorry. The vengeance of a tyrant majority appeared to be almost sated with this humiliation, and poor Mr. Colepepper was at length dismissed in peace!—*cessit furor et rabida ora quierunt.*

Twice before had the freeholders of this noble county vindicated their title to the magnificent apostrophe of the present poet-laureat,—

Vanguard of liberty, ye men of Kent!

In November, 1640, Sir John Colepepper, one of their knights of the shire, stoutly declared their wishes. “Mr. Speaker, I stand not up with a petition in my hand, I have it in my mouth, and have it in charge from them that sent me hither, humbly to present to the consideration of this House the grievances of the county of Kent. The chief are Papists, ship-money, and monopolies.” With equal firmness when parliament adopted tyranny, the grand jury of Kent presented a strong petition against the militia ordinance. “I have read,” said the recreant Pym, once so strenuous for the subject’s right to petition, “of a people in Africa, who sent a challenge to the wind, whereupon, at the meeting, the wind blew down mountains on them, and overwhelmed them; I hope

these bold and insolent adventurers, who have presumed to send a challenge or defiance to this House, shall find a like stroke of their wonted power and justice.”

The orator declaimed as if unlimited power and justice always went together. How constantly, in their headlong career of might, did justice limp and lag behind! His censure had more in it of spleen than policy, and of policy than justice; yet, strange as the tenet might sound, when coming from the lips of one who had directed libellous petitions against the king to be published on posts, and proclaimed by the sound of drum and trumpet, the truth is not the less certain, that, till the middle of the eighteenth century, the right to petition on public subjects was seldom, if ever, exercised by the constituency, and not conceded by their representatives. The suitors, who dared to remind the House of unpleasant facts, spoke at the peril of contempt, of being condemned for an affront to the majesty of Parliament.

We have classed and considered among the obsolete privileges those immunities which members enjoyed for themselves, their servants, and goods, against all process and molestation of the law. The vindictive privileges of the members for threats, assaults, insults, and traducing their characters, remain in full force, rarely appealed to, and therefore uncommon, but ever unquestioned. The first notice of menace to a burgess deserves citing in the terms of the original, for their amusing quaintness.

“On the 12th February, 1620, Mr. Lovell complains that one Dayrell had threatened his person.<sup>r</sup> He is ordered to be sent for by the serjeant, and

<sup>r</sup> Burgh's Political Disquisitions.



brought to the bar, but, denying that he spoke the words charged upon him, he is ordered to attend on the 13th; when, one of his witnesses being a woman, Mr. Crewe and Sir Edward Coke oppose her being called to be examined, very gravely objecting, on the authority of St. Bernard, 'that a woman ought not to speak in the congregation.' A committee is therefore appointed to go out and examine her at the door, and Sir Edward Gyles reports the examination, and Dayrell is ordered "to be committed to the serjeant, and then to come and acknowledge his fault, which, if he does not do, then to be committed to the Tower."

The House have a clear right to punish for contempt all who are hardy enough to attack the person or assail the reputation of any of their members. The mode of redress was sometimes taken in a very fantastic fashion. We read in Townsend,<sup>s</sup> that a page was committed to the custody of the serjeant, on the complaint of Sir Francis Hastings, who stated, that, as he went down stairs, the page offered to throng him. When the poor boy had knelt at the bar, and expressed his contrition, some Puritan member moved that, because his hair was very long, he might be carried to a barber, and close cut, before his discharge. But it was thought very unfit for the gravity of the House to take notice of so light a fault, so, after a sharp and threatening admonition, the petulant page was discharged.

Tenacious of their political dignity, and sensitive to affronts, the House punished a hasty phrase of scorn with even captious vigilance. When Sir Herbert Crofts went, with other knights and burgesses, to hear the royal speech of good King James, one Bryan

Tashe, a yeoman of the guard, violently repulsed the knight, saying, "Goodman Burgess, you come not here."<sup>t</sup> This was resented as an affront to the whole House, and would have excited great irritation, had not one of the ministers of state made an apology. The insulted Commons acquiesced in Tashe asking pardon for his fault, and receiving at the bar a reprimand from the Speaker on his knees. In their address to the king, touching their privileges, they mentioned this slight as not yet forgotten or forgiven. "The words of the yeoman of the guard were very opprobrious and might have been not unfitly applied to the peasants of France or boors of Germany." As the yeomen of the guard might have received secret encouragement from the king or nobles to insult the burgesses, their quick resentment of the contumely is to be commended, but no such commendation can be given to the tale-bearing captiousness, which condescended to notice and report the talk and gossip of serving-men. Complaint was made that Thrower, servant to the Master of the Rolls, did say, "that, if a bill were brought in for women's wyers in their pastes, they would dispute it, and go to the question, and that he heard the Lords say as much at his master's table."<sup>u</sup> Thrower denied the words at the bar, but was ordered into the custody of the serjeant.

The same undignified querulousness at the whispers of evil tongues marked their descendants. One Windebank was tried at the Lords' bar, for saying that "Mr. Pym had taken a bribe of £30, sitting in the chair, in Easter Term; that he had as many sugar-loaves given for bribes as he had sold for 6 or £700." In

<sup>t</sup> Petyt.<sup>u</sup> Sir S. D'Ewes.

their eagerness to catch all reports, the House resembled the ear of Dionysius.

From this excessive jealousy, even the moderate Convention was not free, but committed themselves to situations unbecoming their dignity. The House being informed that one Mr. East, at Whitehall, declared that some members had lately drunk King James's health,<sup>v</sup> Mr. East was ordered to attend forthwith at the bar. When called in, he informed the inquisitive assembly that he had heard one Mr. Goddard, a brigadier, say that one Mr. Kniveton, a gentleman pensioner, had told him that there were three parliament men drank King James's health, at a tavern in Westminster. They were all summoned, when Kniveton laid the story on one Whitwrong, who, not being able to shuffle it off, confessed that he usually drank something too much, and did not remember ought of the matter, or that he had told any such thing; and, Kniveton acknowledging that he believed Mr. Whitwrong had sat up all night before he told him, the House proceeded no further in their over-curious investigation.

It would have been well for the quiet of the realm if a fourth of the House had confined their disloyalty to merely drinking the health of the abdicated sovereign. A gossip, who rejoiced in the name of Kit Smelt, being reported to have said of Sir Peter Rich, a member of the Convention, that he was the first Popish knight King James had made, was locked up at the serjeant's for twelve days.<sup>w</sup>

This morbid appetency in hearkening to complaints did not comport with that freedom of discussion which

<sup>v</sup> Journals, vol. x.

<sup>w</sup> Journals, vol. xi.

ought to pervade the length and breadth of England. The leader of the tory party, Sir Edward Seymour, appears to have been a frequent complainant. One Buckley was ordered into the custody of the serjeant for maliciously promoting reflections and scandalous reports of that not immaculate baronet. The serjeant received commands to lay his clutch on Edward Theobald, "for casting scandalous aspersions on Sir Charles Barrington, the member for Essex." To redeem their credit with the public, the obnoxious House of Commons of 1704 resolved, "That to asperse any with being in the interest of the pretended Prince of Wales or the French Government, for or in respect of his behaviour in the House, is villainous and seditious, destructive of the liberties of parliament and the freedom of elections, and tends to create a misunderstanding between her majesty and her subjects."

A resolution of this nature, a mere *brutum fulmen*, has long been exploded, whilst the complaints of individual members are becoming each session more infrequent; and yet, who can deny the acquisition of personal dignity and public esteem by this abstinence from grievance-making! The case of complaint must be very peculiar which can justify a member's appeal to the House for protection. They have tardily and with reluctance acknowledged the truth, that a member's honour is often maintained by silence; that a grave public character will weigh down the whispers of calumny; and that vulgar abuse may be crushed with the scorn of neglect. It required the experience of the nineteenth century to teach that idle slander is best scattered with a laugh!

Written insults in books and pamphlets require more grave animadversion; yet, in dealing with these,



the House have acted too readily on the principle of the Spartan lawgiver, who caused all interest tables to be burnt, and said, he never saw so fair a flame as those books yielded. The fate of the first burgess who complained of libels was so disastrous that it should have been a warning to future members against copying his folly; but, alas! their name is Legion. In the forty-third year of Elizabeth, we are informed, a Mr. Doyley, of Lincoln's Inn, stood up with a formal complaint.\* "I think myself bound in conscience to certify you of an infamous libel. Parliament, saving your presence, Mr. Speaker, is called "the assembly of fools." When the printer had been sent for, and the book well scanned, "it was found," says the worthy reporter, "to be a mere toy, and an old book called 'The Second Part of Jack of Dover,' a thing both stale and foolish, for which Mr. Doyley was well laughed at, and his credit much impaired in the opinion of the House." Their censures ought assuredly to be restricted to those libels alone which disparage the House collectively, or asperse its members as such, in the exercise of their parliamentary functions, and even here too great activity is to be deprecated.

Mr. Petyt, in his *Miscellanea Parliamentaria*, gives a long list of censures most inefficacious upon those who have written books to the dishonour of Parliament, commencing with the diatribe of the unhappy Arthur Hall, four times in tribulation on account of his satirical spirit. Dr. Cowel, the learned civilian, was suddenly made famous by their complaints against his Law Dictionary, in which he discoursed of the

\* Sir S. D'Ewes.

king's absolute sovereignty ; and Dr. Mainwaring was prosecuted into a bishopric for publishing, in two sermons, that the king's command, in imposing taxes and aids without the consent of parliament, did so far bind the consciences of his subjects that they could not refuse the same without peril of eternal condemnation !

A House of Commons, that ought to be free and fearless, seems to have shrunk from all open license of the pen as instinctively as the most jealous court, and to have listened with avidity to the charge of any querulous member, who chose to make them the confidants of his griefs. Orders similar to the following may be frequently met with in the Journals. "The House being informed that Anthony Row, Esq., a member, had dispersed a printed paper reflecting upon some of the members of the last parliament, he is ordered to attend."<sup>y</sup> Mr. Row escaped from the serjeant by an apology. "The printer of a pamphlet, 'An Account of the Proceedings of the House in relation to the Re-coining of the Clipped Money,' is ordered into custody." John Rye, a merchant, having delivered a paper at the door of the House, intituled, "The great grievance of John Rye, of London, merchant," as it reflected on a member, is ordered into custody. In April, 1689, the House ordered "A scandalous libel, intituled 'A Short History of the Convention, or Newly Christened Parliament,' " to be burnt by the common hangman, at Temple Bar, Palace Yard, and the Royal Exchange, as if to obtain for it as wide a circulation as possible, regardless of the lessons taught by history.

<sup>y</sup> Journals, vol. x.

The profligate Sejanus, we read in Roman story, prevailed on the senate to order a book in praise of Brutus and Cassius to be burnt.<sup>z</sup> This prohibition naturally increased the circulation of the work : “*Libros cremandos,*” says Tacitus, “*censuere Patres, sed manserunt occultati, etenim, punitis ingeniis, gliscit auctoritas.*” Lord Bacon,<sup>a</sup> an authority equally classical, has remarked, with his wonted philosophical wisdom, “The punishing of wits enhances their authority; and a forbidden writing is thought to be a certain spark of truth, that flies up in the faces of them that seek to tread it out.”

<sup>z</sup> Warburton's Pope.

<sup>a</sup> Bacon's Essays.

---

## CHAPTER VII.

THE vindictive privileges of the House, even the best assured and most essential to the due performance of its high functions, are necessarily odious in the eyes of the people.

They observe that, in its most legal shape, privilege has always something of an arbitrary appearance; that in its exercise all the ordinary forms of justice are disregarded; that the accused are examined to criminate themselves; that evidence against them is given without the sanction of an oath; that they are deprived of the assistance of counsel; that matters of law are decided by persons wholly ignorant of law; that the body which sits in judgment is usually interested in the decision.<sup>a</sup> They find that, in fact, by virtue of this claim, some men have been sent to prison for expressing their opinions on public affairs in the most constitutional manner; others, for venturing to assert their undoubted rights to private property; others, for bringing actions which the highest tribunals in the country had declared to be maintainable; attorneys and counsel for performing their professional duty; judges for deciding according to law;—in short, that there is scarcely any act, however innocent, or however meritorious, which has not at some period been

<sup>a</sup> Mr. Pemberton's Pamphlet.



voted into a contempt of one or other House of Parliament, and that the punishments awarded have often been as barbarous as the grounds of complaint have been frivolous.

As if to make the exercise of these unpopular rights still more odious, the House have advanced their standards into neutral territory, and pronounced all libels on religion or the state to be constructive libels on themselves, who are met together to consult for the good of both. During the first three reigns which succeeded the Revolution, they appear to have been most exemplary in the performance of their self-imposed labours.

The whole vindictive artillery of Parliament, its worse than Papal bulls and temporal excommunications, were played off against constructive libellers. These paper bullets of the brain, the only missiles which did take effect in that bloodless revolution, as they whirled past in countless numbers, seem to have caused not less a panic than if charged with certain death. The Jacobite tracts, with which the friends of the exiled Stuarts assailed the usurper; the polemical pamphlets by whose force busy ecclesiastics sought to unsettle the Church of England; all application, in short, of intellectual strength against the Government, appear to have been dreaded equally with the exertion of physical force, and crushed with all the weight of parliamentary prosecution.

King and Commons vied in eagerness to suppress the mischief. The House addressed the King to put the laws in force against profane libels, and Queen Anne required the House to devise a remedy against seditious libels. They could devise no remedy against these pestilent books so effectual as to burn them, and,

the criminal law being then administered too much on Draco's principle, the executioner found few intervals of leisure between the suspensions of Tyburn and the fires of Palace Yard. Excessive rigour proved wholly ineffectual to abate the nuisance—an abortive quackery to check a raging epidemic. Political ballads swarmed then as abundantly as caricatures now, but public men had not yet acquired sufficient wisdom to look at them and pass on. Printed on the coarsest paper, hawked or sung about the streets, and sold for half-pence, they eluded the vengeance of the House and the vigilance of the serjeant-at-arms. Of their clever virulence, the following, preserved in the Somers and Harleian manuscripts, are a few specimens.

“All gentlemen seamen weary of their lives, and desirous to serve King William on board the royal navy, shall have for encouragement fair promises, and no performances, as follow. For each able seaman 24s. per month, to be paid when he can catch it, and be hanged for mutinying if he demands it.”

In a pretended catalogue of books of the newest fashion there is mentioned, with the motto *ex nihilo nihil fit*, a dissertation on the no power of a no parliament, making a no king, that will always be doing us no good, by leaving us no parliament without perjury and pensions, no church without knaves and intruders, no trade without hazard and losses, no credit at home or abroad, no honour nor conscience, no blood in our veins. The king was described in the Jacobite lampoons as a brutish usurper; he and his amiable consort depicted as Tarquin and Tullia, trampling over the body of a parent; and when other topics of abuse failed, the obnoxious daughter of James II. was reviled for the innocent occupation with which she employed

her vacant hours. The following is the most lively verse of a ballad on the royal knitter contrasting her with the exiled Queen Mary of Modena.

Blest we, who from such queens are freed  
 Who, by vain superstition led,  
 Are always telling beads ;  
 But we've a queen now, thanks to God !  
 Who, when she rides in coach abroad,  
 Is always knitting threads !<sup>b</sup>

These Jacobite squibs we sometimes find disguised beneath a category of petitions, in which drollery and politics are cleverly blended—A petition of the country parsons that in their favour the House will be pleased to take off the additional duty on tobacco—Petition of the booksellers, that when a dull book lies heavy on their hands it may be publicly burnt to promote the sale of it—Petition of the moderate divines, that January 30 and May 29 may be discarded out of the almanack, as being great eyesores to the godly party—Petition of the College of Physicians, that the importation of Dutch doctors may be prohibited ; of the barbers, that they may be made free of the church, since the divines have usurped upon their trade by turning trimmers ; of the parish clerks, that a day be set apart to celebrate the pious memory of Sternhold and Hopkins, and that the city poet may draw up the service of the day,

‘ And for your worships then we'll pray  
 For eke, for ever, and for aye !’

Against this wreath of vapour the artillery of the House could not fail to be pointed in vain. In the following *jeu d'esprit*—an arrow from the same quiver—the newly crowned William and Mary and the polemical

<sup>b</sup> Somers Tracts.

Bishop of Salisbury, who fawned upon them as conquerors, were adroitly glanced at. "Cases of conscience and queries.—Whether the fifth commandment be part of the coronation oath since our governors observe it so strictly? Whether Protestant tyranny be not better than Popish tyranny by six millions per annum? Whether Julian the Apostate, or the hangman, have made the best second treble to Gilbert's pastoral?"<sup>c</sup>

In all their crusades against these offensive publications, the House was actively supported by the Crown, alike eager to punish the criminal and to suppress the crime. The one strained prerogative and the other their privileges, to deter, to condemn, and to punish. The Prince of Orange had not been a fortnight in power, before a notice was inserted in the "London Gazette," to make a diligent search in all printing-houses, and to apprehend all malicious authors, printers, and publishers. The act for prohibiting all publications without a license was renewed in the year 1692—some few lords having signed a protest, honourable to the framers, against it—and only suffered to expire in the year 1694, when the press at length escaped from the thrall of a licenser. But its first breath of freedom was often rudely checked by the grasp of the House, who fancied their power in peril from political squibs, and scrutinized new works apparently with the constant forethought of a bonfire. Bishop Burnet having published a book with the silly title, "King William and Queen Mary conquerors," found his literary labours consigned to the fostering care of the common hangman in Palace Yard. Both Houses joined in a resolution that the assertion of King William and Queen Mary being king and queen by

<sup>c</sup> Somers Tracts.



conquest was highly injurious to their majesties' rightful title to the crown of this realm. Bishop Burnet's pastoral letter, inculcating the same courtly but unconstitutional doctrine, is said to have owed its committal to the flames to the punning banter of some members, who called out, as the charge was read, "burn it, burn it,"<sup>d</sup> not a bad pun.

An address was also voted to the Crown to dismiss Mr. Bohun from his office of licenser, for the oppressive duties of which he appeared too inactive. Parliament was scarcely more complaisant to the legislature of the sister-kingdom than they had been to the meddling prelate. Complaint of a printed pamphlet being made to the House, "The case of Ireland's being bound by Acts of Parliament in England stated," denying the authority of the people of England to bind Ireland, an address was voted to the king to inquire for the author, that he might be punished. On the report of a committee appointed to examine the book, the House drew up a further address to his majesty, "that the votes and proceedings of the House of Commons in Ireland, and a bill sent here under the great seal of Ireland, intituled, 'An Act for the better securing his majesty's person and government, whereby they would have an act passed in the Parliament of England, expressly binding Ireland to be re-enacted there,' were an occasion and encouragement to the forming and publishing the dangerous doctrines contained in the condemned book." The address went on, "We, with all duty and humility, assure your majesty of our ready concurrence and assistance in a parliamentary way to preserve and maintain the subordination and dependence of Ireland

<sup>d</sup> Oldmixon's History.

to the imperial crown of this realm." Their concluding prayer to the king entreated that he would be pleased to discourage all things which may in any degree tend to lessen the dependence of Ireland upon England. The king promised encouragement and redress. A bonfire was kindled with the manifesto of the Irish House of Commons.

These committals to the flames, owing to the polemical excitement and intolerant spirit of the times, were never prosecuted with such eagerness as against tracts of controversial divinity. The House seemed anxious to usurp the office of the lower House of Convocation, with so much avidity were schismatic writings seized upon, and dreamy metaphysics consumed by fire. The Church of England was engaged in a perpetual struggle, during the reign of William for protection, and in that of Anne for supremacy. Soon after the accession of that nursing mother of the Church, when a tory legislature strove to put down the scandal of occasional conformity, the celebrated De Foe wrote an ironical treatise, "The Shortest Way with Dissenters;" arguing, with pretended gravity, that a system of extermination was the best.

The House, we are assured, was at first completely bit by this clever banter, caricaturing their own violence; but seemed kindled to fury when awakened to a sense of the raillery that had been passed upon them. The libeller fled, to escape the terrible consequences of their anger. They prayed the queen to proclaim a reward for his apprehension; and, in accordance with their petition, the following description of his person was inserted in the London Gazette:—

“January 10, 1702-3: St. James’s Palace. Whereas Daniel De Foe, alias De Fooe, is charged with writing a scandalous and seditious pamphlet, entitled, ‘The Shortest Way with the Dissenters.’ He is a middle-size spare man, about forty years old; of a brown complexion, and dark brown-coloured hair, but wears a wig; a hooked nose, a sharp chin, grey eyes, and a large mole near his mouth; was born in London, and for many years was a hose-factor in Freeman’s yard in Cornhill, and now is owner of the brick and pan-tile works near Tilbury Fort, in Essex. Whoever shall discover the said Daniel De Foe to one of her majesty’s principal secretaries of state, or any of her majesty’s justices of the peace, so as he may be apprehended, shall have a reward of £50, which her majesty has ordered immediately to be paid upon such discovery.”

Who could recognise, in the late hose-factor and proprietor of pan-tiles, the inventor of a new world in Robinson Crusoe’s Island—the vivid painter of death in his History of the Plague—the great magician of the heart in exciting wonder and pity! But, had his genius been as great as Milton’s, on whom the prison of the House formerly closed its gates, it would not have saved the hunted libeller from his prosecutors. The attorney-general instituted a prosecution by the command of the Commons, and poor De Foe was, among other punishments, sentenced to the pillory, to which he afterwards wrote an ode, replete with rugged rhymes and sentiments of masculine courage. The best excuse that could be urged, were excuse admissible for so cruel an indignity, passed in a literary age upon a man of such attainments, was his own graphic description of the

intolerable height to which the trade of libelling had advanced:—"Nor do we fight with clubs, as at Marlow; or with swords and staves, as at Coventry; with stones and brick-bats, as at —; but we fight with the poison of the tongue; with words that speak like the piercing of a sword; with the gall of envy, the venom of slander, the foam of malice, and the venom of reproach; bitter revilings, insufferable taunts, injurious backbitings, and unmannerly railings."

A rival pamphleteer, Tutchin, who conducted with much ability a weekly periodical called *The Observer*, having incurred the displeasure of the House by his strictures on the bill for suppressing occasional conformity, was prosecuted at their command to conviction, and sentenced to be whipped by the common hangman. Pope, in his *Dunciad*, alludes to this shameful punishment with inhuman glee, in a line far more disgraceful to the scoffing scribe than to the sufferer:—

"And Tutchin flagrant from the scourge below."

All dabblers in newspapers, whether editors or occasional contributors, each in his turn kissed the rod. Dr. Welwood, the editor of *Mercurius Rusticus*,<sup>c</sup> —Dyer, the conductor of the *News-letter*, —Fogg, the proprietor of *Fogg's Journal*, afterwards called by a punning continuation, *Mist's Journal*, received unwelcome visits from the serjeant-at-arms, were doomed to express contrition on their knees at the bar of the House, and often to expiate their offence without pen, ink, or paper in the Gate House, or in Newgate. Within the sacred precincts of St. Stephen's, certainly, the liberty of the press had neither 'a local habitation

<sup>c</sup> Made physician to the king after his censure by the House.



nor a name ;' even benefit of clergy was not allowed to the divine, who, whether asserting the transcendental rights of his church, or promulgating the visionary chimeras of the closet, or confounding schismatics, found himself involved, he knew not how, in the meshes of privilege. The Rev. Mr. Steevens, rector of Sutton, having written a memorial of the Church of England, filled to overflowing with the bitterness of a nonjuror, was prosecuted by order of the House, and adjudged to pay a fine of 100 marks, and to stand twice in the pillory.

From this deep indignity to the priesthood the good-nature of the Duke of Marlborough with difficulty saved the clerical pamphleteer, though, in his private letters to Godolphin, the hero of Blenheim shows how much these libels chafed his too sensitive spirit. "The villainous way of printing stabs me to the heart. In the camp I have had time to read the memorial of the Church of England, the most impudent and scurrilous thing I ever read. I cannot forbear laughing, when I think they would have you and I pass for fanatics, and the Duke of Buckingham and Lord Jersey, pillars of the church ; the one being a Roman Catholic in King James's reign, and the other would have been a Quaker or any other religion that would have pleased the late king." In the duke's laughter there was no merriment, but he exercised a magnanimity which Parliament might have striven to emulate.

On the head of another beneficed clergyman the bolt of the House fell with more seeming justice, for his offence came within their immediate cognizance. Complaint having been made to the House of a book entitled "Animadversions upon the two last January sermons, one preached to the honourable House of

Commons, and the other to the Lower House of Convocation," the Commons agreed to burn the first, but found themselves compelled to notice the latter sermon, which contained an offensive parallel between the sufferings of our Saviour and those of Charles I. "He was not only called king by some," said the sycophantic preacher, "and at the same time derided by others for being so called, but he was acknowledged by all to be a king; he was not just dressed up for an hour or two in purple robes and saluted with a 'Hail, king!' but the usual ornaments of majesty were his customary apparel: his subjects owned him to be their king, and yet they brought him before a tribunal, they judged him, they condemned him, and, that they might not be wanting in anything to set him at nought, they spat upon him, and treated him with the utmost contempt." This and other profane passages, which the Rev. W. Binckes, D. D., had the extreme bad taste (he may be acquitted, on the plea of weakness, of intentional impiety) to address to the clergy, were said in the Commons' vote of censure to give just scandal and offence to all Christian people. They would not burn the sermon, but directed their resolution to be forwarded to his diocesan, the Bishop of Litchfield and Coventry, and thus usefully, by way of example, barred his hope of promotion.

Another Doctor in Divinity was called upon to answer at the bar of the House for his publication, intituled "Second Thoughts concerning the Human Soul, demonstrating the notion of the human soul, as believed to be a spiritual, immortal substance, to be a plain heathenish invention, and not consonant to the principles of philosophy, reason, or religion." Dr. William Coward, the author of this startling title-

page, quailed before the frowns of the Speaker; he expected to fare no better than the philosopher disputing with the master of twenty legions, and said that he never intended anything against religion; that, if there has been any passage in the work contrary to religion or morality, he was heartily sorry, and ready to recant the same. This seasonable submission saved the author from any further mark of displeasure than that his heresies should, according to the common fate of polemical authors, be committed by the hangman to the flames.

In 1712 these intolerant critics, the Commons of England, passed, to their own shame, a like judgment on a preface to four sermons by the Lord Bishop of St. Asaph. As they had been preached on state occasions, the worthy whig prelate, launching into politics at an appropriate season, prefaced their publication with a few sentences expressive of his own reverence for the memory of King William and Queen Mary, and of his indignation at the late peace of Utrecht. The following passages, which might be cited as models of graceful composition, were deemed by bigoted parliamentary censors most deserving of punishment by fire. “ I have, I own it, an ambition of exempting myself from the number of unthankful people; and, as I loved and honoured those great princes living, and lamented over them when dead, so I would gladly raise them up a monument of praise as lasting as anything of mine can be; and I choose to do it at this time, when it is so unfashionable a thing to speak honourably of them. We were, as all the world imagined then, just entering on the ways that promised to lead to such a peace as would have answered all the prayers of our religious queen, the

care and vigilance of a most able ministry, the payments of a willing and obedient people, as well as all the glorious toils and hazards of the soldiery, when God, for our sins, permitted the spirit of discord to go forth, and, by troubling sore the camp, the city, and the country, (and, oh that it had altogether spared the places sacred to his worship!) to spoil for a time this beautiful and pleasing prospect, and give us, in its stead—I know not what. Our enemies will tell the rest with pleasure.”

It may be noticed, as a remarkable proof how high-handed violence is sure to produce reprisals, that the complaint against this preface was made by Mr. Hungerford, who had been expelled the House in the reign of King William, and seconded by Mr. Manley, still smarting from his unjust committal to the Tower.

Constructive contempts, by which an offence against the state was transformed into an offence against the House, and whatever affected the public was supposed to affect themselves, as representatives of the public, could only be introduced stealthily *sensim sine sensu*, and encroach into a right. When the House, in 1621, employed bad methods to punish bad men, and voted one Mitchell, a justice of the peace, and the tool of Sir Giles Mompesson, incapable of continuing in the Commission of the Peace, and sent him to the Tower, alarmed at their own temerity, they appointed Noy and Hakewill, two of their ablest black-letter lawyers, to search for precedents, in order to show how far, and for what offences, their power extended to punish delinquents against the state, as well as those who offended against that House. Precedent they could find none for punishing by vote delinquents



against the state. Some days after, the House voted that they must join with the Lords for punishing Sir Giles Mompesson, "it being no offence against our particular House, nor any member of it, but a general grievance."

When Parliament fell into a transport of rage against Floyd for disparaging the Elector Palatine, the king sent a message of salutary caution against the inconvenience into which their zeal might hurry them, suggesting whether they could sentence one who did not belong to them, nor had offended against the House, or any member of it, referring them to an entry on the rolls of parliament, 1 Henry IV., that the judicial power of treason does not belong to the Commons. But for this salutary caution, the House would have persisted in fining obnoxious parties, in breaking open doors to search for papers, and, blending the judicial power with the legislative, have made their little finger heavier than the loins of the law.

Extravagant offences cannot justify any extravagance of power in repressing them, and the Commons have always proved the surest avengers of public wrongs, when pursuing a constitutional course of vengeance. Among the chief methods by which they continue to mark their displeasure, in forms consonant to the spirit of the constitution, are votes of censure and criminatory resolutions. These want indeed the sanction of positive law, but seldom fail to overawe guilty ministers, and to strike a panic into public defaulters.

When the penalties in their own summary powers seemed inadequate to the full chastisement of the offence, the House was in the habit of sometimes voting addresses to the throne, to direct a prosecution by the

attorney-general, whose mercies, they fondly believed, would be scarcely more tender than their own ; and sometimes, of their own authority, commanding the first law officer of the crown to file a criminal information. Most of these misdemeanants might have been punished without any special interference. Some of the cases are amusing in themselves, from their trivial or party character. One John Froggart was thrown to the attorney-general for having, upwards of a fortnight, every post-day, constantly taken members' letters out of the boxes at the lobby door, in hope to meet with some inclosing bills of exchange. 'His perseverance, worthy of a better cause, met with signal disappointment ; so few remittances were honourable members then in the habit of receiving by post, that, during a search of sixteen days, the purloiner could find but one letter inclosing a bill for £30, and even that single one he could not succeed in getting cashed. So depreciated was the circulating medium with the second parliament of good Queen Anne, and so forlorn the credit of Members of Parliament upon Change !

The thunder of the House of Commons was sometimes fulminated on deserving objects. William Fuller, emulating the infamy of the informers in the Popish plot, and twice volunteering himself at the bar of the House to prosecute false informations, they unanimously resolved that "William Fuller is a notorious impostor and cheat, and false accuser, having scandalized their majesties and their government." After debate they passed a further resolution, praying for an immediate and effectual prosecution, so futile had former proceedings become by delays, and technical objections, and adverse juries. The prisoner's shame-

lessness compelled a conviction. He was sentenced "to go to all the courts in Westminster, with a paper pinned on his hat expressing his crime; that he should stand three times in the pillory, two hours at a time, be whipt, kept to hard labour till the second day of next term, and fined 1000 marks." The fearful account which he gives of his sufferings in the pillory—"A stone struck me that was found to weigh above six pounds; I was not sensible for hours"—may well vindicate the abolition of this dangerous instrument of torture.

The House drew within its grasp, by means of resolutions, or votes of censure, or addresses to prosecute, offenders not properly amenable to its jurisdiction, even according to the mysterious law of parliament. Thus Mr. Whitaker, Solicitor to the Admiralty, was ordered into the custody of the serjeant for a great neglect of his duty, in suffering persons of insufficient substance to become bail for a confederate of Captain Kidd. A resolution subsequently passed, that the attorney-general must prosecute this solicitor for breaches of trust, and that the office was new and unnecessary, and ought to be abolished. The Lords of the Admiralty, one should have thought, might have been permitted to decide on these matters, peculiarly within their cognizance. Extraordinary as it may sound in the ears of professional men, the attorneys do not appear to have been popular as a class, with the House. Complaint being made of an exorbitant and scandalous bill of charges delivered in by one Thomas Rogers, a solicitor, to the gunners of Portsmouth, in respect of a petition of theirs presented the last session, highly reflecting, in divers articles thereof, upon the honour of parliament, and its proceedings.

and information being further given that Rogers threatened to sue petitioners at law for his demand, the country gentlemen, astonished at the audacity of an attorney daring to bring an action for his bill, ordered him into the custody of the serjeant<sup>f</sup>—a newer way to pay old debts than even the dramatist dreamt of. With more show of right, but with over-activity, the attorney-general received directions to prosecute the warden of the Fleet for suffering some prisoners to escape.

That the prosecutions directed by the House should in general have proved abortive to a proverb, cannot excite much wonder, for they enlist the sympathies of Englishmen, ever lovers of fair play, in favour of the accused. He is sent down to be tried by a jury, condemned previously by parliament. He hazards a verdict, branded with the odium and imputation of the House of Commons. "We ought not," says Burke,<sup>g</sup> "to take upon ourselves the office of prompters to the attorney-general. Juries have, in general, acted most perversely in their findings, and returned a verdict of not guilty to the accusations of the Commons. By this honest finding they have vindicated the liberties of the subject against the tyranny of a captious and unjust oligarchy."

We read of the most frivolous pretexts being eagerly caught at to suffer the supposed delinquent to escape. A vindictive prosecution which had been committed to the attorney-general against Charles, Lord Halifax, for having, as auditor of the Exchequer, been guilty of a breach of trust, in not examining every three months the tellers' vouchers, according to the letter of the act, was afterwards abandoned from a

<sup>f</sup> Journals, vol. xiv.

<sup>g</sup> Cavendish Debates, page 147.



technical defect in the proceedings. There was a mistake in the information, as Sir Edward Northey informed the House : the words laid were, that he did transmit, and not in the negative, that he did not transmit, the imprest rolls. A bit of bad Latin, *nec non* for *et non* saved the defendant, or, to speak more truly, rescued the perilled honour of the House.

When their own summary powers and the terrors of the attorney-general proved insufficient to punish adequately some new state crime, not provided against by the laws, the House had recourse to extraordinary penal legislation. These capital acts of supreme power, in which the Legislature assumes the functions of a judicial magistracy, have never reflected credit on the usurping party ; nor, unless in cases where the attainted had fled from justice, is there any exception to this general condemnation : certainly not in the early precedent of Cromwell, Earl of Essex, who was attainted by the law he himself had made—*nec lex est justior ulla*—for not answering the charge which he had never heard, and which he had never been called upon to answer : certainly not in the attainder of that brave, bad man, the great Earl of Strafford, a proceeding which can never be defended on constitutional principles, with whatever zeal party apologists may attempt to justify a measure of party hate, and which provoked the sublime anathema of Lord Digby, “ He that commits murder with the sword of justice heightens that crime to the uttermost. The eye, if it be prætincted with any color, is vitiated in its discerning. Let us take heed of a blood-shotten eye in judgment.” Nor can we except from this universal stigma that cruel act of attainder by which the bodies of Cromwell, Ireton, and other

regicides, attainted after death, were dug up, each from his resting-place, to be hung in chains, the representatives of the nation, to their eternal disgrace, forgetting the national principle

“That English vengeance wars not with the dead.”

The most ugly blot that clings to an otherwise fair page in English history, King William's reign, is the attainder of Sir John Fenwick. He had been engaged in a plot for assassinating the king, and had done still worse in the opinion of the conqueror of the Boyne,—had disparaged his abilities as a general. A letter of the guilty critic to his wife, in pencil, was intercepted, in which he confessed his crime ; but Lady Fenwick rejoiced to think she had saved her husband's life by bribing one of the two witnesses who could prove the treason to escape to France. Meantime Sir John, informed of the discovery of his letter, in the hope of saving his life, made a full and true confession in writing of the statesmen who were implicated in traitorous intrigues with King James, and involved in his alarming information the majority of the cabinet. This indiscretion sealed his doom. The convicted conspirators strained all their power, in the agony of revenge and alarm, to crush the informer by a bill of attainder, supplying the evidence of the absent witness by illegal proof of what he swore before the grand jury, and extorting evidence of guilt against the criminal from the pious acts of his wife.

The tories made a gallant stand against this condemnation of a guilty man by an iniquitous process ; and the debate which they raised is by far the longest and most able of any recorded in the seventeenth

century. "Let us not," said Harley, "out of hatred or zeal against a guilty man, lose our own innocence." One of the happiest retorts in the annals of parliament enlivened the debate. Sir Edward Seymour having said, "I am of the same opinion with the Roman (Cæsar) who, in the case of Cataline, declared he had rather ten guilty persons should escape, than one innocent should suffer;" Lieutenant-General Mordaunt replied, "The worthy member who spoke last seems to have forgot that the Roman who made that declaration was suspected of being a conspirator himself." After a discussion that extended far into the night of several successive days, notwithstanding constantly decreasing majorities, the fatal act was at length carried through the Commons by 189 votes against 156. It was debated with still greater vigour in the Lords, and only passed the Upper House by a majority of seven votes, the low church bishops constituting that majority. A protest, signed by forty-one peers, denounced, in terms of equal truth and wisdom, the dangerous consequences and illegal cruelty of a proceeding which forms at length the subject of universal reprobation.

The constitutional remark of Mr. Hallam<sup>h</sup> on the attainder of Strafford applies with equal force to the subject of the Peers' protest: "The attainder could not be justifiable unless it were necessary, nor necessary if a lighter penalty would have been sufficient for the public security." Professor Smyth has pronounced sentence upon their iniquity,<sup>i</sup> in a tone worthy of the moral teacher endeavouring to make youth wiser and better. "The proceedings against Sir John Fenwick are highly disgraceful to the whigs.

<sup>h</sup> Constitutional History.      <sup>i</sup> Lectures on Modern History.

It is scarcely possible that bills of attainder should be otherwise than perfectly disgraceful to those who have recourse to them. They are the convenient but coarse and savage expedients of power; for bills of attainder take away the life of an offender by positive enactment; and that because, according to the existing laws, he cannot be pronounced guilty. The bow-string of a sultan, or the execution of a tyrant, can do no more: in each case, there is a departure from those known forms and antecedent provisions of law, which are the only real protection of innocence. Many who voted away Fenwick's life, when the law could not take it, voted from the basest motives, to remove out of hearing a man who knew and could have proclaimed too much.' Equally unjust in principle, though innocent of shedding blood, were those bills of pains and penalties by which the Legislature invented penal laws for the occasion.

The most extraordinary Act of this nature that ever met with the concurrence of six successive parliaments, was one for continuing the imprisonment of Major Bernardi and five others, implicated in Sir John Fenwick's plot to assassinate King William. Bernardi lingered in Newgate for a period of forty years, from 1696 till released by death in 1736, at the advanced age of eighty-two. He survived all his unhappy brother conspirators, and was importunate in petitions to parliament for liberation. But the resentment at his supposed crime was too enduring to listen to the voice of justice or mercy, and his cruel imprisonment was prolonged by six special acts of parliament, in a manner shocking to humanity. They could not condemn and would not pardon him. His persecution reflects odious dis-



credit on the vindictive Commons, and on the acquiescence of Government, a rigour which superseded the law. No occasion of public rejoicing, not even the coronation of a king or the birth of an heir-apparent, was deemed sufficient for one gleam of royal mercy to visit the dungeon in which these martyrs to a merciless polity languished, without trial yet without hope of pardon. Had their plot been of as deep a dye as that of Guy Fawkes, it would not have excused, much less justified, this special violation of the forms of law.

We may take pride in the thought that similar iniquity could not be tolerated now, and that we, as a nation, are grown more merciful than our fathers. In criticising one of Pope's epitaphs, the great moralist, Dr. Johnson, took an opportunity of expressing his sense of this national wrong.<sup>k</sup> The poet had concluded an inscription over the tomb of Sir William Turnbull, secretary of state to William III., with the rhymes,—

“ Such this man was, who, now from earth removed,  
At length enjoys the liberty he loved.”

After condemning the thought in the last line as impertinent, having no connexion with the condition of the man described, the grave commentator adds, “ had the epitaph been written on the poor conspirator who died lately in prison, after a confinement of more than forty years, without any crime proved against him, the sentiment had been just and pathetic.”

In 1715, by a majority of 154 to 44, the House refused even to allow a petition of the conspirators to

<sup>k</sup> Johnson's Works, vol. ix.

be brought up. The poor men had printed a statement of their wrongs, blended with some pathetic texts from Scripture ; but the Commons were deaf to all cries for compassion, for the tyranny of the many is more exacting and obdurate than any single despotism : they struck but would not hear.

Not less flagrantly unjust, in open violation of the principles of equity, was the banishment inflicted, under the penalties of an *ex post facto* law, by the ministers of George I., upon the plotting Dr. Atterbury, Bishop of Rochester, the first prelate who visited the Tower as a prisoner since the revolution, and the last. The great reproach which the bishop's punishment incurs—for, of his guilt, there can be no doubt—is the setting aside those ordinary forms and safeguards which the law enjoins—a violence, the danger of which may not be felt, only because the precedent has happily not been followed. To condemn, to amerce, and to punish by particular acts of penal justice, upon exigencies unprovided for in the criminal code, to be extreme to mark what is done amiss beyond what has been written, seems too great and too dangerous a power for man to exercise over man<sup>1</sup>.

<sup>1</sup> Woodesson's Lectures.

## CHAPTER VIII.

---

THE frequency and futility of impeachments during the three reigns that succeeded the Revolution cannot but attract the notice of a reader of English history. Of the sixteen impeachments instituted by the House, between the years 1689 and 1724, seven were tacitly abandoned without proceeding to trial; three were thrown up in disgust, in consequence of disputes between the two Houses; in one, that of some poor foreigners for frauds on the revenue, the parties pleaded guilty; in another, Dr. Sacheverell's untoward prosecution, the sentence seemed a derision on the vindictive Commons: in two only, the trial of Lord Derwentwater and the rebel Lords, whose lives paid the fearful penalty of treason, and the prosecution of the Lord Chancellor Macclesfield for peculation, was the event worthy of the occasion. According to the excellent figure of Lord Somers, this favourite weapon, their longest and sharpest, ought to have hung up like the sword in the temple, only to be unsheathed at periods of peculiar exigency: it was found too ponderous for ordinary hands, too unwieldy for common use. The contrast between the frequent escapes from this method of prosecution, and that of prosecution by indictment, is extremely marked. A prisoner might hope for impunity in the one, and de-

spair of it in the other. "Few persons," writes the experienced Sir Bartholomew Shower, "as I ever heard or read of, when indicted for high treason, had the good fortune to escape safe from this fiery trial;" and yet the annals of the House prove, with what rigour, if not effect, this instrument of the people's vengeance had been plied against court minions, corrupt statesmen, wicked ministers, and usurping despots.

The first impeachment in the name of the Prelates, Lords, and Commons of England, presented to Richard II., in 1386, prayed the dismissal of the Chancellor and Treasurer, "because these men were not for the advantage of himself and kingdom." By similar articles of impeachment, several royal favourites, Lord Latimer and Lord Suffolk, the De Spencers and Tresilian, were crushed and blighted; but, as the Commons appeared then the mere satellites of men in power, their accusation seems rather the consequence than the cause of waning popularity—the pretext, not the real motive, for their overthrow.

Under the Tudors the burgesses were trained as hawks to swoop down the royal quarry. The usual course was to present a memorial to the king in parliament, stating such offences as they thought at the time peculiarly injurious to the public;<sup>a</sup> and praying that the delinquents, without naming them, might meet the punishment of the law. After the petitioners had received encouragement from the Crown, they exhibited articles of impeachment, specifying the particular culprits. The ineptitudes with which their complaints were sometimes mingled, can scarcely fail to provoke a smile. When called upon to perform their task of hastening the doom of Cardinal Wolsey, the

<sup>a</sup> Burgh's Disquisitions.



following formed their sixth ground of charge:—  
“That he came daily to your Grace *rowning* in your ear, and blowing upon your most noble Grace with his perilous and infectious breath, to the marvellous danger of your Highness.” In this instance, however, the form of impeachment was inverted, the function of accuser being exercised by the Lords, of judge by the Commons, who dismissed the accusation.

It was under the first of the Stuarts that the Commons did more than play at the game of impeachment, as the puppets of king or courtier, the minions of a powerful favourite, or serving-men of some hostile peer. At the commencement of the seventeenth century they began to originate charges of misdemeanor, and, as guardians of the public purse, to accuse to conviction public defaulters. In their successful attacks upon Lord Treasurer Middlesex and the Lord Chancellor Bacon, they were encouraged by the Prince and Duke of Buckingham, much to the displeasure of *cannie* King James, who told the haughty favourite, with proverbial shrewdness, that he was making a rod to be used on his own person, and that he would live to have his fill of impeachments.

Fatally was the royal prediction fulfilled, when Pym went up to the Lords at the head of 300 commoners, to impeach the Lord Lieutenant of Ireland of having attempted to subvert the fundamental laws, and introduce arbitrary power—when the venerable Laud bowed his hoary head to the axe for newly-invented treasons—when the king himself sat covered in the presence of a strangely-fashioned tribunal, and all dignities went down before that hurricane of impeachments.

At the Restoration, the Commons relapsed from their overweening pretensions, and became suitors for

penal justice to the tribunal supreme in judicature, though no more than equal in legislation. The greatest of inquests began what the highest of tribunals accomplished. Lord Clarendon and the Duke of Buckingham proved their might, Lord Stafford and Lord Danby their injustice.

An effectual check was put to the practical usefulness of this penal power by the policy of the cabinet, which Charles adopted as the text or motto of kingcraft, that no state minister ought to be punished, and especially not upon parliamentary applications. The Commons were only permitted, as of old, to run down the game that a corrupt court put up, but never to be in at the death, if the object of their chase was a member of the cabinet.

Owing to the clemency of men's tempers and complicated intrigues of the times, the impeachments that were voted by the House after the Revolution, proved equally abortive. Sir Adam Blair and several of his companions were impeached of high treason in 1689, for being in arms under King James, but they lurked in France and were attainted by the Scotch law for continuing in that kingdom. Articles were also exhibited against Burton and Graham, and committees appointed to search for precedents and prepare the charge, but they made no report.

The Earls of Peterborough and Salisbury lay in the Tower for months, under prosecution of impeachment for departing from their allegiance and being reconciled to the Church of Rome; but anti-popery rigour died away; and the lords came forth on bail, after a year's imprisonment, to meet any charge that might be made.

In a sudden transport of wrath, the House voted

an impeachment, in 1693, against Lord Coningsby and Sir Charles Porter, for governing by martial law in Ireland, and executing criminals without form of trial ; but the House soon repented of their precipitate rigour, and voted that the exigencies of the times formed a sufficient condonation.

It was not till 1695 that they girded up their loins in earnest as public accusers, and brought into peril, for the third time, the fame and fortunes of a statesman who had grown grey in political iniquities—the Duke of Leeds. The history of this cavalier, and the character of his prosecution, furnish a useful and interesting index to the proceedings on parliamentary impeachment.

The Committee appointed to inspect the books of the East India Company, having, in their rigorous scrutiny, ascertained that comparatively small sums of 1, 2, and £3000 had been paid for special service in the years 1688, 89, and 90, but that upwards of £80,000 had been paid to the governor, Sir Thomas Cooke, in 1693, and being baffled in their further attempts to discover how this large sum had been expended, made a special report to the House, who ordered Sir Thomas Cooke to be committed to the Tower, and passed a bill of penalties to compel him to give an account of the money by him distributed.<sup>m</sup> When it was sent up to the Lords, the Duke of Leeds, then President of the Council, with an impatience which strengthened the suspicion that he was himself implicated, spoke vehemently against it, and introduced what he was about to say with a most solemn protestation of his perfect innocence. Laying his hand on his breast, he declared upon his faith and honour, as a peer and a gentleman, “ that he was

<sup>m</sup> Parliamentary History, vol. v.

perfectly disinterested, and had no part or concern in this matter, and, therefore, might the better appear against it, which he did, expressing great abhorrence of the bill."

A few days afterwards, when the unfortunate governor had been brought to the bar, and declared, with tears, his readiness to make a discovery, provided he might be indemnified from all actions of *scandalum magnatum* and suits in equity, the agitated duke moved a defensive resolution, for which he could not find a seconder, that Sir Thomas Cooke might be called in and asked, whether he were willing, upon oath, to purge all those who sat there. A bill of indemnity passed both Houses, on condition that he made a full discovery within three days; and that, in default, he should thenceforth continue a prisoner in the Tower. That his disclosures might implicate even royalty, was soon surmised, from a short speech which the king addressed to the two Houses of Parliament on the 22nd of April: "My lords and gentlemen; I take this occasion to tell you, that the season of the year is so far advanced, and the circumstances of affairs are so pressing, that I very earnestly recommend to you the speedy dispatching such business as you think of most importance for the public good; because I must put an end to this session in a few days."

The inconvenience of inquiry appears to have been at least as pressing as the season, for, on the following day, a reluctant confession was wrung from Sir Thomas Cooke, that the first payment of £10,000 had been made by Sir Josiah Child to the king. Sir Thomas explained, in extenuation, that it was a customary present, and that, in King Charles's and other former reigns, the like had been done for several years, which, by the books of the Company, would appear. It



might have been expected, not unreasonably, that the hero of the Revolution would have kept his hands more pure from gifts than the corrupt Stuart. £30,000 having been traced to the custody of Sir Basil Firebrace, the baronet fenced with the committee for a whole day, and then, alarmed at the probable displeasure of the House, desired leave to be again called in, and confessed that he had given two notes for 5500 guineas, payable to Mr. Bates or bearer; this Mr. Bates being acquainted with several persons of honour, and thought capable of much service in obtaining the charter. The hunt was now up, and the scent lay warm. Sir Basil informed the committee, that he had been introduced by Mr. Bates to the lord president, who made some scruples in point of law against the charter—he had not then fingered the money.

Mr. Bates next appeared in the confessional, and explained that he had used his interest with the lord president, at the request of Sir Basil, who had promised that he would do what service he could, and that the lord president had often showed himself his friend. He gave a most suspicious story of the appropriation of the money: “that he received three notes, for 5500 guineas in the whole; that he sent a servant to receive the money, but cannot say the time; that he told my lord president what sum he had; and would have pressed it upon my lord, but he refused it: whereupon this deponent, in regard he could not tell money very well himself, did ask leave of my lord, that his servant might tell the money: to which my lord made answer, he gave leave, and, accordingly, M. Robart did receive the money; that he had not the notes till after one charter passed, and before the other passed. He saith that all the notes were

given together at one time ; and that he, this deponent, gave no counter-notes when he received them.”

When it was found that this bag of guineas could not be clutched with safety, it was brought back. Being hard pressed by inquisitive members, the witness confessed, “ that M. Robart, after he had received the money, brought the same to him, which hath remained in his (the deponent’s) possession, and in his own house, till the time that he paid 4400 guineas thereof back again to Sir Basil ; which, as he takes it, was upon Monday or Tuesday last ; and he, being examined again to the same matter, saith that these 4400 guineas paid back to Sir Basil were in four bags, with 1100 guineas in each, brought to him by Robart within a month last past : and, as to the 600 guineas remaining of the 5000, he at first said he had spent the same ; and then, being afterwards examined to the same matter, did say they were at home in his study ; that he may have spent some. The reason why he paid back the 4400 guineas was the noise that it made ; and that people might think he did not deserve them : that the whole 5500 guineas were for his own private use ; and that he might give them to his footman.” Sir Basil Firebrace, who seemed eager to secure his own safety, by turning informer, assured the House that, from the time the notes were given, they had free access to the lord president, and found him easy and willing to give his assistance. The investigation being now keenly pursued against the retainer of the Duke of Leeds, Mr. Bates further owned, “ that he had not 4400 guineas in his house on Sunday night last ; and that the 4400 guineas which he paid back to Sir Basil, was brought to him by M. Robart on Tuesday morning last, at eight o’clock.”

The committee immediately reported these important examinations to the House, who, after a warm debate, resolved, upon the violent presumption of his guilt, that Thomas Duke of Leeds be impeached of high crimes and misdemeanors. This important day, April 27th, was full of stirring business to the aged and intriguing duke. Upon reading the reports of the joint committee in the Lords, he protested his innocence upon his faith and honour, imputed the whole blame to the unfortunate Mr. Bates, and attempted to shew how lightly the burden of suspicion pressed upon himself, by telling one of those pleasant stories, which the favourite of the courtly and anecdote-loving Charles could relate with so much grace. "He would be very free in mentioning to their lordships all that had passed. His friend, Mr. Bates, came and informed him that he was to have a sum of money of Sir Basil, and desired his lordship to lend him one of his servants, Mr. Bates keeping but a footman, to receive the money, and so he lent him M. Robart. That his lordship knew nothing of the sum; but afterwards, Mr. Bates came to him and told him he had received 5000 guineas, which he offered to him, telling his lordship that he had been very obliging and kind to him; and that, in acknowledgment of the many favours he had received from his lordship's hands, he humbly desired him to accept of them, which he refusing, Mr. Bates pressed him earnestly to take one half or a quarter, which he still refused, declaring he would not touch a penny of them; and told him, since he had taken them, he thought there was no need of returning them; they were his own, and wished him good luck with them; as, I remember," said his lordship, "I did once to Mr. Harry

Saville, for whom I had a great respect ; which reminds me of a story I must needs tell your lordships upon this occasion." He then related the story. "When he was treasurer, the excise being to be farmed, for which many put in, the bidders for it, who were to give in their proposals sealed up, having applied to Mr. Saville for his interest at court, he came to his lordship and desired that he would tell the gentlemen that put in, who were several, that Mr. Saville had spoke for them. What ! said I (proceeded the duke), would you have me tell all of them so, when but one is to have it. No matter for that, said Mr. Saville, for whoever has it will think I have done him this service, and I am sure of a good present without more ado. So, my lords, when the men came, I told them one after another, Sir, you are very much obliged to Mr. Saville ; Sir, Mr. Saville has been very much your friend. A little after, when the thing was settled, Mr. Saville came and thanked me for what I had done ; and told me he had got his present that he had expected, which I told him I was glad of, and wished him good luck with it, as I now did to Mr. Bates. And thus I was then a dark shadow to Mr. Saville, as I was now to Mr. Bates."

A dark shadow would indeed have rested on the nice sense of honour in his noble audience, the taint would have attached to them, had they shared in the merriment this avowal of duplicity was expected to create ; but they listened in gloomy silence, and made no response to his ill-timed jocularly. A note was put into his hand, informing him of the resolution just voted by the Commons. He broke off in his oration somewhat abruptly, and, following the precedents of the Earl of Bristol and Duke of Buckingham, with the same forlorn chance of producing any



favourable effect, desired the House to be informed that he requested a hearing. When admitted with the usual ceremonies, he startled his hearers with an emphatic declaration. "It is a bold truth, but it is a truth, this House had not been sitting, but for me! I can and do say," harangued this hoary dabbler in corruption, with all the hardihood of innocence, "that neither directly nor indirectly, upon my faith and honour, have I ever touched one penny of the money. . . . I have a thread which I hope to spin finer, and make it appear that this was a design laid against me, long before the naming of this committee; a warning was given me some time since that this matter would be proved against me; and that Firebrace had been told he should be excused, if he would charge the duke. I ask no favour but your favourable justice." His whole harangue breathed the same tone of defiance, and concluded with a haughty prayer:—"If you will not reconsider it, then I pray that this matter may be brought to a determination, and that I may have at least your speedy justice."

This petition was the only one to which the incensed House of Commons seemed ready to accede. Two days afterwards the articles of impeachment were carried up to the Lords, Mr. Wharton, the controller, embodying with emphatic brevity the charge of corrupt traffic by himself, or by his agents and servants, with his privity and consent. The following day, the Duke of Leeds put in his written answer, that he was not guilty, and again declared before God, and upon his honour and conscience, that he was not guilty, and had great wrong done him in this accusation. This was the 30th of April. On the 2nd of May, the fiery duke complained of the delay of the

House in not replying to his answer, and on May 3rd, opposed the reading of a bill for granting to the king a duty upon glass, with an assurance that it grieved him that he, who was as much as any man for the dispatch of money bills, and never opposed any before, should now do it; but he hoped the Lords would consider his case, not only as his, but the case of any of their lordships; for it was in the power of a *tinker* to accuse at the end of a session, and one might lie under it without remedy; and since that they, by mismanagement, had delayed this money bill for six weeks, it would not be of mighty ill consequence if it should lie a day or two longer. His lordship pressed very earnestly that, if the House of Commons did not reply, the impeachment might be discharged; for, if it were not, he might lie under the reproach thereof all his life. He believed the Commons would do nothing in it; for, though they had appointed a committee to meet, they met but once, and that for form, and never met more, nor would do anything in it."

The secret of this eagerness to court investigation was soon explained. The same day, the Commons informed the Lords of the reason of their tardiness, if tardy they were, that the important witness, Monsieur Robart, had withdrawn. An address was immediately voted to the king, to issue a proclamation for stopping the ports, and seizing Robart's person, the duke, with a show of frankness affecting to assist the House, informing them that it was requisite in a proclamation to insert the Christian name, and that Robart's christian name was John. He then proceeded to give a most suspicious account of the man's absconding; "that he had been sent into the country to inquire after his daughter's health, and had been recalled by

a special messenger ; that his footman waked him about two of the clock on the Sunday morning (for which he was very angry), to let him know Robart was come, and was in the house, which was as soon as he could possibly return : that his lordship told the footman he would go to sleep, and would speak with Robart in the morning, when he usually called him ; but when his lordship asked for him in the morning, the footman said he was gone, and, upon inquiry, he found Robart did not lie, nor pull off his boots, in his chamber ; that the footman said he asked whether the news was true that his lord was impeached, and Mr. Bates in prison ; which the footman owned to be true ; and his lordship believes that frightened Robart. That his chaplain shewed him a letter from Robart, with a desire to acquaint his lord that he designed for his own country, Switzerland, through Holland, from whence he would write his lord a true account of all the matter of the 5500 guineas to Mr. Bates.”

He concluded this unsatisfactory narrative, which would have well become an alibi at the Old Bailey, with a specimen of cool impudence, on which none but a courtier of Charles II. would have ventured :—“ I humbly move your lordships that you will come to some resolution, that, if this matter be not immediately proceeded upon, so that I may be tried before the ending of this session, that the impeachment shall fall.”—Upon which some few lords cried out, “ Well moved ! ”—a shout of irony, it may be inferred, at the audacity of the proposition, and not a token of approval. “ Surely,” as Ralph has well observed,<sup>n</sup> “ that

<sup>n</sup> Ralph's History.

outcry of theirs was rather a mark of scorn than approbation ; for, though the duke, by sending away his servant, had deprived his adversaries of that legal proof which was necessary to conviction, enough had appeared to prove him guilty in the opinion of the whole world ; and if anything could be added to the reproach which he had brought on his character, on the high office he possessed, and the government he served, it was the solemn protestation of innocence he set out with, and the contumacious demand of a speedy trial, which he knew neither could nor would take place."

Parliament was prorogued the same afternoon, and no further notice of the pending prosecution taken by the fiery duke till six years afterwards, when the Lords, dismissing some futile impeachments of the Commons, called to mind these long forgotten articles also, and ordered them to be dismissed.

This thrice impeached peer, the cashierer of the pensionary parliament, deserves especial mention. The founder of his race was a gallant apprentice, who, in Elizabeth's reign, jumped off London-bridge to save his master's child from drowning;<sup>o</sup> and, as the proper guerdon of his chivalry, gained the lady in marriage, became a wealthy merchant, was knighted, and lord mayor. Few of our peerages, though they may boast a more remote, are illustrated by a better, origin, than of humanity and courage. The eldest son of Sir Edward Osborne, a Yorkshire baronet, born in 1631, a fellow traveller and tennis-player with Sir William Temple in France, member for Yorkshire in the Long Parliament of 1661, the future Duke of Leeds took his seat among the high cavaliers, and in

<sup>o</sup> Grainger.



anger at the chancellor's neglect of their claims, assumed an active part against Lord Clarendon, who terms him a dependant and creature of the Duke of Buckingham; and mentions an instance of his petulance,<sup>p</sup> that "he had told many persons in the country, before the parliament met, that the chancellor would be accused of high treason, and, if he were not hanged, he would be hanged himself."

He had no scruple in aiming at this end, but the poisoned chalice was afterwards, by a just retribution, twice and again brought to his own lips. To support the charge relating to the sale of Dunkirk, Sir Thomas Osborne said, that "a great lord told him that the earl had made a bargain for Dunkirk three quarters of a year before it was known;" and this was the mockery of evidence on which a virtuous man was to be impeached, and exiled, and attainted!

The old cavalier pretended hate to Clarendon for his ingratitude to the royalists, and had no embarrassing scruples. Appointed treasurer of the navy, he opposed the favourite measures of the Cabal,<sup>q</sup> according to the strange fashion then and a century later prevalent in parliament, that a subaltern might oppose in the House the measures of his principal, without resigning, or losing his situation. A fraudulent and capitulating opposition might not be without advantage in this Machiavelian code of policy. A copious and plausible speech gave proofs of that skilfulness in debate, and superior understanding, which Lord Dartmouth<sup>r</sup> largely ascribes to him.

In June, 1673, he was created Earl of Danby, and succeeded Lord Clifford as lord high treasurer.

Memoirs of Lord Clarendon.

<sup>q</sup> Courtenay's Life of the Duke of Leeds.

<sup>r</sup> Notes to Burnet.

Reresby informs us—but for the venality of the times we might suspect the story to be mere Yorkshire gossip—that a bargain was struck with the retiring treasurer, that he was to receive half the salary of the office—a species of good-will so often made the subject of barter in the chafferings of tradesmen. Lord Danby proved an excellent financier, a daring but unscrupulous premier: under his administration the revenue was augmented, and the expenses of government diminished; a treaty of peace was concluded with Holland; a crowning measure of Protestant policy, the Princess Mary was given to the Prince of Orange in marriage; a bill was introduced, and debated for sixteen days, for enforcing the strange test from every holder of office, “I do swear that I will not at any time endeavour to alter the government either in church or state”—a strong attempt to enforce passive obedience; parliament was prorogued for fifteen months, an unusual and unconstitutional period; and a proclamation issued for the suppression of coffee-houses, “because in such houses, and by the meeting of disaffected persons in them, divers false, malicious, and scandalous reports were devised and spread abroad, to the defamation of his majesty’s government, and the disturbance of the peace and quiet of the realm.” Though this high tory ordinance was speedily withdrawn, its tenets proclaimed the author the Metternich of England.

Danby introduced into the Lords a bill for securing the Protestant religion; to place ecclesiastical patronage and the care of the royal children in the hands of the bishops. He was a stanch anti-Gallican, and a strong anti-papist. Giving some credit to the tales of Titus Oates, he brought them before parliament, contrary to the king’s commands, and unconsciously sealed his

own doom. "He would find," Charles angrily told him with his wonted shrewdness, "that he had given the parliament a handle to ruin him, as well as to disturb all his affairs, and that he would live to repent it." By Danby's advice, Charles reluctantly consented, in his own expressive phraseology, "to pare the nails of a popish successor," to suffer in his person a curtailment of the royal prerogative, but he would not permit the right line of the Crown to be interrupted. This palliative scheme shared the wonted fate of half measures, and only increased the popular disgust against its supposed author.

The most hostile minister to France whom Charles ever tortured with his part-confidence, he was compelled by his royal master's urgent wants, to negotiate with the Court of Louis for secret supplies. A high-minded minister would have at once resigned, but such a tone of chivalrous public virtue was unsuited to the times, and above the character of Danby. Confessing to Ralph Montague, our ambassador in France, the secrets of his haughty spirit, "he wished he could cudgel the French into better manners;" but found himself constrained to propose the base bargain that, in case the conditions of peace shall be accepted, the king expects to have six millions of livres a-year for three years. The king explained with frank hardihood the reason, that it would take that time to put parliament in a humour to grant him any supplies; and added the memorable "P. S. This letter is writ by my order. C. R."

Though the treasurer had kept his own hands clear from gifts, repelling Montague's hint, "there was nothing the French court would not give him to make his fortune; it should be given him in diamonds

and pearls that nobody could ever know it," this letter, by a just punishment, proved the warrant for his fate. The fawning envoy turned traitor upon his patron to gratify some personal chagrin, bartered with Barillon for 100,000 crowns to ruin the minister, informed an unscrupulous opposition of the fatal letter, and caused a copy to be read in the House. Instantly the Commons, by 179 to 116, voted to impeach the treasurer, the very solicitor-general, Winnington, speaking and voting in crimination of the premier. The chief heads of the charge were for traitorously endeavouring to hinder the meeting of parliament, by obtaining large sums of money from the French king; for wasting the king's treasure in pensions and secret service to the amount of £236,000 in two years; for being popishly affected and traitorously concealing the bloody plot; and for obtaining considerable grants.

Danby defended himself in a high tone of innocence. "I can only say that, though I take it for one of the greatest misfortunes that can befall a man to lie under such a charge, yet I would much sooner choose to be under that unhappiness than under the circumstances of the gentleman who has thought fit to produce that letter to the House." The silly charge of being popishly affected he treated, as well he might, with the utmost scorn. "I hope your lordships will forgive my weakness in telling you that I have a younger son in the House of Commons (Lord Dumblaine), whom I shall love the better as long as I live for moving to have that part of the article to stand against me, that by such pattern it might appear by what sort of zeal the whole hath been carried to my prejudice. As to wasting the king's treasure, I never knew any treasure



to waste. I entered upon an empty treasury, and never saw one farthing given to his majesty, that had not been strictly appropriated and applied." Admitting his gains, he concluded with a sentence unquestionably true: "Had I either been a papist, or a friend to the French, I had not been now accused."<sup>s</sup> We read with a blush of shame, that the accusers of Danby were themselves in the pay of France, and that the foundations of the charge were laid deep in consummate treachery.

"Clodius accusat mœchos, Catilina Cethegum."

Their factious violence compelled a dissolution, and the pensioner Parliament ceased to be bribed and to threaten. But, still unbending, the Treasurer advised the king to vex their successors by refusing to ratify their choice of a Speaker, and was assailed, when the Commons could find a voice, by Powle, as "the person to whom we owe the dangers and fears of the French king against us," a strange topic of reproach in the mouth of a patriot and a whig! On the impeachment of the obnoxious Treasurer being revived, he resigned the staff, and his good-natured master announced in a speech to both Houses, in a *brusque* off-hand way, "that he came to put an end to that business. He had given to Danby a pardon under the great seal, and, if it should prove deficient, would give it him ten times over. I have dismissed him from my court and counsels, and not to return."

This concession came too late. The ex-minister having withdrawn, a bill of attainder passed against him, unless he surrendered by a certain day. He did surrender and was committed to the Tower, pleading

<sup>s</sup> Courtenay's Life.

his pardon as an answer to the charges of the Commons. They voted that his pardon was illegal and void, and forbade any counsel to maintain, at the bar of the Lords, the validity of the pardon. The Lords appointed a day for hearing the Earl of Danby to make good his plea; but in the mean time the House was prorogued, and afterwards dissolved. It would be unjust to consider the Treasurer's plea as an admission of guilt, for he was not permitted to make a full defence, and an obnoxious prisoner might anticipate perjury in the witnesses for the Crown and credulity in his judges. "If the king," says Danby,<sup>t</sup> "would have permitted me to produce Mr. Montagu's letters, the crime of endeavouring to get money from France (if it could be called a crime under the circumstances aforesaid), would have been laid to Mr. Montagu's charge and not to me, as I told the king, when he offered me his pardon; but was answered by his majesty that I owed him more duty than to expose his and his ambassador's letters of private negotiations betweenhim and the king of France; and he was sure I would not be guilty of such a perfidious baseness to him, as Montagu had been guilty of." The unfortunate minister fell, and, as Algernon Sidney wrote at the time, "never was man less pitied in his fall than he."

After lying in the Tower nearly four years, from April 1679 to February 1683, Lord Danby sued out his writ of habeas corpus, and argued his right to be bailed before the judges of the King's Bench for two hours, with impassioned energy and a haughty consciousness of wrong. "For half a year after his impeachment," he said, "he was not a week without endeavours used by strange people to get to speak with

<sup>t</sup> Duke of Leeds' Memoirs, 1710.

him, such as he had reason to suspect to be knights of the post. He had been imprisoned above forty months, a greater punishment than the crimes alleged against him could have deserved, if they had been true. If all were true, he had his majesty's pardon; yet, both that pardon and he had been prisoners together for above three years, of which he said he durst confidently affirm that his was the first precedent since the conquest."

The attorney-general having replied to his question, that he had his majesty's consent to his being bailed, "he desired to know, as the law admitted of no absurdity, how anything could, in reason, be more absurd, on behalf of the king, than, if the king's prisoner, and at the king's suit, should be kept in prison by any of the king's courts against the king's will! The court said, it was a very hard case, but here was the misery, they could only compassionate him, for that his lordship was imprisoned by a higher hand, and where they had no power to intermeddle. His lordship was not indefinitely imprisoned, for, whenever his majesty pleased to call a parliament, his lordship had a remedy."

Lord Danby was remanded, and again brought up in Trinity Term, when he warmly refuted this excuse of the judges:—"Truly, my lords, perhaps your lordships may know the mind of the king or his ministers better than I do; but, if you do not, I am sure no man but the king can tell whether I shall have remedy then or no; for, by the experience of three parliaments that have been called since I was a prisoner, it hath appeared that I have had no remedy; therefore I should be glad to see this matter any better proved than it hath been, that I am not indefinitely

imprisoned ; but if this cannot be proved neither, but that I must wait till the king shall call a parliament, I shall be no more certain of my remedy than hitherto I have been ; truly, then, I shall need no other council but your lordships' to prove I am under an indefinite imprisonment, and that any man in England may be so when the king pleases ; and, how any doctrine can be more arbitrary than that, or less to be defended by law, whensoever that matter shall be brought into question, others than either your lordships or I must be judges, and those who will be parties so much concerned for their own sakes, as well as the public, that I believe there is small doubt to be made how they will then decide this question.

“ It is said this cause of mine is depending in Parliament, a superior court. My lords, I know no court that is superior at this time to this court, where I am now ; and how anything can be said to be depending in a court that hath no being, I think will not very easily be defended from nonsense, without having the matter extremely well explained ; and, whenever that superior court shall have a being, my cause will then be before it by my being bailed to appear there. No sooner is Parliament dissolved, but experience shows that execution may be sued, and goods levied, and the property of men's estates changed ; and, therefore, it is plain, that depending is not then meant in the same sense, for then there could have been no execution sued. Now, my lords, if the dissolution of a parliament can restore the judges' power in the interval of parliament, so as to award an execution upon a man's estate, where the property shall be changed, and yet we are to believe that the same dissolution cannot restore the power of the judges, so as to give a man a



little ease from a confinement within four walls, where the justice of no court is questioned, nor arraigned, nor no wrong can have been done to anybody; but, on the contrary, does right to the king, who, by his consent shows his will to have a man bailed, and great right to the subject, who ought to be delivered from the danger of an indefinite imprisonment, which is so contrary to law; then, indeed, there must be some infallibility supposed in that chair, which shall maintain such doctrine, and must be submitted to with the same implicit faith, which they do, who can believe infallibility. But, for my part, who can believe infallibility in no kind upon earth, I confess I must have my reason better satisfied before I can any more believe this exposition of law, than I can believe those infallible men's exposition of the Gospel.

“My warrant of commitment is till I am discharged by due course of law. If there is no course of law for me, liberty itself would not only be utterly lost, but, to make the riddle the greater, and the manner more ridiculous, it would be lost, and yet nobody invade it. Show me an example of this in any nation under the sun but this, that there wants a power in the government to relieve a prisoner at all times, if it would, and I will be satisfied. Nay, my lord, the very Spanish Inquisition is more reasonable than this; for, though the cause may be unjust that they commit a man for, and their usage of him may be very severe, while he is there, yet the Inquisition, if they please, can deliver him; there is no prisoner in the world that cannot be delivered by some power or other, but me; and, my lord, this is a rule that must be for every man in England as well as me; and I am not so inconsiderable, but that my fate may be

made a precedent of note. Besides, where is the justice of the nation, and what a shame would it be to our laws and to our government, that it could be said of this country, that a man might be punished by imprisonment in England (where the government is not arbitrary), for seven years, or more, and at last be found guilty of no offence; and what satisfaction could be in nature given to that man? I am the king's prisoner, and I have the king's pardon, and if I cannot get to be bailed, there is not only a defect of jurisdiction of this court, but a defect of the legal authority and power of the kings of England to administer justice to their subjects, which was never heard of, I think; and I hope I shall never live to hear of it, especially from the king's supreme ordinary court of justice."

This lofty, vehement, unanswerable argument might shame and convince, but could not compel his judges to incur the formidable risk of braving the displeasure of a future House of Commons. The Chief Justice and Mr. Justice Dolben delivered their opinions that the earl could not be relieved by that court; Mr. Justice Jones could not give his judgment that the earl should be bailed at that time; Mr. Justice Raymond intimated there might be a failure of justice, but he had not had time to view precedents. "I have not dared," concludes the reporter, "to set down the particulars of what was spoken by the judges, not having well heard what was said." Fortunately for the earl, remanded to the Tower, a chief justice succeeded, not afraid of his voice being heard, and, on the last day of Hilary Term, 1683, Jeffries admitted Lord Danby to bail, himself in £20,000, and two dukes and two earls in £5000 each.

The history of commitments by the crown afford

no case of "wrongous imprisonment," (to use a forcible Scottish law term) more flagrant than the five years' durance of the ill-fated earl. It may be inferred from an order in the Lords' Journals, giving Lord Pembroke special leave to visit the prisoner in the Tower "for one time," that he must have been detained in close custody, yet he bore it with a stout heart, and seemed to be very little concerned.<sup>a</sup> At length, on his tardy liberation, Lord Danby presented himself at a court no longer gay, himself a saddened cavalier, and was received with much kindness by Charles, who assured him, no doubt truly, that his detention had been against his own wish. Lord Danby declared to Reresby his continued aversion to a French or Popish interest, and related a visit of ceremony that had been paid him by the Duke of York on his release. The duke, with his wonted ungracious frankness, told Danby he had heard of his having spoken slightly of him: the earl explained that he had never expressed himself in terms of personal disparagement, but that he had often differed with his highness in opinion, and could not help saying that he had never yet found any cause to repent it.

The truth-telling statesman remained in seclusion till, in June, 1687, provoked by the bigoted despotism of his old antagonist, he wrote to the Prince of Orange, reminding him that no competitor could pretend an equal share with himself in the particular benefit he had wrought, and tendering his hearty service in matters which were not very proper to be written. Being refused permission to visit Holland, and obtaining from the jealous king a reluctant consent for his son to go beyond sea, "provided it be not into Holland, for I will suffer no one to go

<sup>a</sup> Reresby's Memoirs.

thither:" he proved the prudence of the royal distrust, by signing, with six others, on the 30th of June, the day of the bishops' acquittal, the patriotic invitation to the prince. He induced Compton, Bishop of London, to sign; and had no objection to write his own signature below that of his inveterate enemy the Earl of Devon; for the former rivals had discovered that they were alike zealous protestants, though not equally supporters of the doctrine of non-resistance. As the letter concludes with suggestions for bringing over some good engineers, ammunition, artillery, and other preparations for war, the proposer of the non-resisting test of 1675 is convicted of glaring inconsistency; but this he shared in common with the church of England, in which the practical sentiment of no popery, when the danger was instant, subdued the speculative tenet of non-resistance.

With deep regret and lingering aversion, had the old cavalier been constrained into covert rebellion. "We are now," he told the Dean of York, "every way in an ill condition. If the king beats the prince, popery will return upon us with more violence than ever; if the prince beats the king, the crown and the nation may be in danger." But the time was come for action. At the head of 100 horse, Lord Danby surprised York, and intercepted a letter from one of the king's friends in Yorkshire, acquainting his majesty that the adherents of the prince in those parts amounted to about 4000 men. His friends, to whom the earl read the letter, proposed that it should be detained; but their wily chief added a cypher to the number, and then sent to the king authentic information that 40,000 men in Yorkshire had risen up against him.



The bewildered monarch, before his flight, offered to throw himself into Danby's hands—a strong proof of reliance on his integrity. He replied that, if his majesty would come without his papists, he would answer for the royal safety with his life ; but the king could not part with his Romish body-guard. Perplexed at his desertion, Lord Danby adopted the convenient theory that, as the king had no son (he believed, or affected to believe, the story of the warming-pan), the Princess of Orange had become queen by hereditary right, and sent a message to the princess, still in Holland, proposing that she should be made queen regnant. The Princess Mary, who felt far less ambition as a daughter than devotion as a wife, declined the proposal with indignation, and sent it with her answer to the prince, who expressed no feeling of surprise or displeasure at the author, but made him President of the Council, and added the title which Charles had designed for him, Marquis of Carmarthen.

Notwithstanding the high office and increased rank, he seems to have regarded the change of dynasty with moody displeasure, and to have been, as his rival Halifax rejoiced to report, “very much down in the mouth.” His high church principles had received a rough shock, and his office, being less lucrative than that of Privy Seal, and less influential than that of Lord High Treasurer, he considered himself aggrieved. He told the king he plainly saw he did all he could to encourage the Presbyterians and to dishearten the church, and informed Reresby that, if James would quit his papists, he had yet a chance.

In spite of this querulous temper, William would not desert the artificer of his marriage, and his favour at court was the signal for renewed attack in the

Commons. "I am for the head of the privy council," said Colonel Granville, "a great man, a bold man, and an able man, capable of making an attempt upon English liberty. When we reflect upon the arbitrary acts and counsels of the Marquis of Carmarthen, in King William's time, it reminds us of the same actions in King Charles the Second's time. I have heard of his merit in the Revolution; a private life would have better become him, and been more for his interests. I cannot wonder if people be cautious in sending money to those that have so often miscarried. At one leap, from being prisoner in the Tower to be President of the Council sticks with me: he has been impeached by the Commons of England, and now to grasp at power to satisfy his revenge upon those who have impeached him for betraying the liberties of England! I would pass some censure upon him, and pull him down, though he were greater than he is; and I will be ready to do always so to those that betray the liberties of England." The attempt to revive the impeachment of the marquis failed, though secretly fostered by the Earl of Shrewsbury and other jealous colleagues.

When the king went to Ireland, he left a cabinet of nine persons to advise the queen, with the Marquis of Carmarthen at their head, upon whose opinion the queen was recommended chiefly to rely. In those delightful letters which good Queen Mary addressed to her husband, so undesignedly descriptive of her devoted affection, she seems to have been more distrustful of the favourite than her husband. "Lord Carmarthen is upon all occasions afraid of giving me too much trouble, and thinks by little and little to do all: every one sees how little I know of business, and

therefore will be apt to do as much as they can. I am very uneasy in one thing, which is a want of somebody to speak my mind freely to; for it is a great constraint to think and be silent; and there is so much matter that I am one of Solomon's fools, who am ready to burst. I believe Lord President and Lord Nottingham agree very well, though I believe the first pretends to govern all, and I see the other is always ready to yield to him, and seems to me to have a great deal of deference for him; whether they always agreed or not I cannot tell."

Having occasion to send two of the council to investigate in person the causes of Lord Torrington's defeat off Beachy Head, the queen found, to her surprise, that Lord Carmarthen desired the mission. "I told Lord President that he could not be spared; but I saw he looked ill satisfied; so, when the council was up, I spoke to him, and bid him remember how necessary he was; he said he did not look upon himself as so tied but he might go away upon occasions. I told him if he were not by place, yet, being the person you had told me whose advice I should follow and rely the most on, I could not spare him."

The queen mentions another cause of dissatisfaction in the Lord President. Two of the lords of the treasury objected to signing a warrant for £8000 to Lady Plymouth, alleging, and, as the queen thought, with some reason, "that the sum was too great to be spared at present." This lady was Carmarthen's daughter. He had caught the trick of complaining, accused those who came to council of acting like pioneers for pay, rather than by inclination, and was accused himself of causeless ill-humour. The Lord President," wrote Sidney, "hath been of late very

peevish, and continually complaining ; I am now his confidant, and he hath almost told me that he would retire in a very little time." His wish for retirement (the king and he had become mutually weary of each other) was accomplished in 1695, when he was promoted to the highest rank in the peerage, the Dukedom of Leeds, conferred upon him at the same time as a similar honour was extended to the Duke of Shrewsbury, who had intrigued against him, to the Duke of Bedford, the father of his leading prosecutor in the reign of Charles II., and to the Duke of Devonshire, who had himself joined in prosecuting the odious treasurer.

Before quitting office, he constrained King William to give his assent to the Triennial Bill, greatly to his own subsequent chagrin: "I have lived to find kings to be true prophets, as well as kings: I have seen many abuses made of the Triennial Act, about which King William was very much displeased with me for concurring, and use the very same expression which King Charles had done on the popish plot, that I should live to repent it; and I am not afraid to acknowledge that I have repented of both, since I have seen such very wrong uses made of them." The tribute is due to his political integrity, that he listened to proposals in favour of James, and no more; that a leading instruction to the emissaries from St. Germain was to get Danby out; that, in the disclosures made by Fenwick, he was the least implicated; and that amid the by-paths of double-dealing and circumvention into which all strayed, he was at least as straightforward as any statesman of his day.

Of his personal integrity, after the disclosures which led to his third impeachment in 1695, it would



be disingenuous, and contrary to all the rules of evidence, to express an equally favourable opinion. Robart may have acted the part of Gehazi, and pocketed the pieces of silver in his master's name, for his own use; but the circumstantial evidence is less strong against the Swiss than against his master.

The Duke of Leeds continued president of the council for some time after his impeachment, but with a reputation so tarnished, that his name was omitted from the commission of regency, on the next visit of the king to the continent. What would be thought now of a minister holding office, against whom an address had been carried in the Commons, that the king would remove him from his counsels; and over whose head an impeachment for corrupt practices hung suspended by a prorogation? It must be confessed, that the statesmen of our times are less callous than their predecessors. It would be an insult to the character of a public man, to add that he is less liable to imputation on his personal honour.

For the remainder of his long life, the duke's only interference with public business was in his place in the House of Lords, where he supported the Tories with voice and vote, affirmed the danger of the church, and denied, with vehemence, that the Commons had made good their first article of impeachment against Sacheverell: "he," the duke, "had a great share in the late revolution, but he never thought that things would have gone so far as to settle the crown on the Prince of Orange, whom he had often heard say that he had no such thoughts himself. That they ought to distinguish between resistance and revolution; for vacancy or abdication was the thing they went upon, and, therefore, resistance was to be forgot; for, had it

not succeeded, it had certainly been rebellion, since he knew of no other but hereditary right." There can be no doubt that the duke spoke sincerely, when he disclaimed all intention of substituting William for James.

In this memorable year, 1710, the duke published a collection of letters illustrating his public policy as treasurer, and endeavoured to rebut the charge of bribery. "It is not less difficult to conceive how that parliament should be called a pensionary parliament, which was not only so sparing in the supplies which were necessary, and did appropriate every penny to particular uses upon account; and that I, that was called the promoter and paymaster of those pensions, had not power to preserve myself from being impeached of treason by those pensioners, for what, in justice, my worst enemies could not have made a misdemeanour."

The duke soon afterwards took the bold course of re-publishing the attacks upon his administration, with the defence. In the propriety of Mr. Courtenay's comment upon a strange omission in this publication all readers must concur, and the majority will, we fear, incline to the least charitable interpretation. "It is somewhat remarkable that, when the duke took pains to illustrate by those publications the transactions which had produced the impeachment of 1678, he should have taken no notice of the charge of 1693, more specific, more injurious, and much better supported. Is it possible that he regarded the affair of Robart as a by-gone trifle, or did he purposely avoid mentioning it as a disagreeable truth?"

In appearance and manners, the treasurer more resembled an hidalgo of Spain than the gay cavalier

of Charles the Second's court. Far from uniting the manners of Chesterfield with the morals of Rochefoucault, he was grave, saturnine, and austere. The Bishop of Rochester (Dolben) is reported by Evelyn "to have expostulated with Danby on his stateliness and difficulty of access, and several other miscarriages, and which indeed made him hated." His morals were, as his manners, unpopular, according to Andrew Marvel's portrait :—

" He is as stiff as any stake,  
And leaner, Dick, than any rake,  
Envy is not so pale ;  
And though, by selling of us all,  
He wrought himself into Whitehall,  
Looks like a bird of gaol."

This sketch may be considered more graphic, and is at least as poetical as the invective which has been erroneously ascribed to Dryden, in the lines upon young statesmen :—

" Clarendon had law and sense,  
Clifford was fierce and brave,  
Bennet's grave look was a pretence,  
And Danby's matchless impudence  
Help'd to support the knave !

Though not liberal of speech, Lord Danby would express his opinions with a terseness which had often the force of epigram : he said of those who received government pay in the Pensioner Parliament, that " they came about him like so many jackdaws for cheese, at the end of every session."

By a clever rebuke to the cold-hearted ingratitude of Charles II., Lord Danby advocated the raising of a statue to the memory of his father, " that the cavaliers might be rewarded, *at least in effigy.*" With

that haughty spirit of arbitrary rule which moulded his public conduct, the Treasurer declared, that “a new ordinance was better than an old law,” a tenet not more terse and epigrammatic than contrary to the first principles of the constitution. He started in public life an upright and high-principled man;<sup>x</sup> but involved himself in some of the most dishonourable transactions in our annals, and became warped and sullied. To apply a saying of Robert Hall’s, “he married public virtue in his early days, but seemed for ever afterwards to be quarrelling with his wife.” He was at length divorced from her, and for ever. Too sordid for real greatness, too selfish for friendship, this imperious statesman left, in 1712, a name, ill-proportioned to his intellectual vigour; for he wanted that plain, straight, simple, and intelligible integrity, which is the best ornament of the character of any man in public as in private life.<sup>y</sup> This want of enduring integrity destroyed the most able of the courtiers of Charles II.,

, “this bark’d the pine  
That overtopped them all.”

<sup>x</sup> Carwithen’s History of the Church.    <sup>y</sup> Professor Smyth.



## CHAPTER IX.

AFTER fruitlessly hunting this boar of the forest, game of the first head, the Commons condescended to chase such small deer as a lustring company. They had been smuggling on an extensive scale ; and, for their complicated frauds, would have been deservedly punished by a court of quarter-sessions with fine and imprisonment, and perhaps the pillory, but were not worthy of such a dignified prosecution. On the 16th of May, 1698, Sir Rowland Gwyn, who gained great reputation, as Vernon declares, “ by ferreting out these rogues,” reported from a committee of inquiry such accumulated acts of smuggling, that an impeachment was immediately voted. Our manufactures were then truly in their puling infancy. It was stated, as an aggravation of the guilt of these parties, chiefly foreigners, that they had reduced the number of looms in England from between 4 and 500 to 168,<sup>a</sup> scarcely so many as are now employed by a second-rate manufacturer in a single mill. Goudet, Longueville, and six others were charged with having carried on a traffic with France during the late war, and maintained a correspondence with several persons in France, and given intelligence ; with having caused to be imported great

<sup>a</sup> Ellis's Correspondence.

quantities of goods and commodities of the growth, product, and manufacture of France ; with having exported great quantities of wool, and conveyed privily divers criminals out of the kingdom. Other charges anticipated the custom-house frauds of modern times.

“ Wholesome laws having been made, that no person should presume to deal in black alamodes or lustrings, not having the mark or seal on them used for foreign goods at the custom-house, or the seal and mark used by the lustring company, they, for the more easy vending and uttering the alamodes and lustrings, which they had so fraudulently imported from France, did make and counterfeit divers seals and marks, in imitation of the seals and marks used for foreign goods at the custom-house, and did affix several of such counterfeit seals and marks to divers pieces of alamodes and lustrings imported from France.”

An order was made that these poor knaves should be tried at the bar of the House of Lords, and the Commons requested that a place might be selected and set apart for the managers of the impeachment ; but to this the Lords, in their jealousy of innovation on established usage, demurred, stating that the committees appointed to manage the evidence had always come to the bar of the House without any other provision ; and that they intended to proceed in the usual manner.<sup>b</sup> A conference having been granted, the Earl of Rochester said that “ the consenting to any one innovation might occasion further disputes ; and, whereas the Commons have instanced that, in the trials of the Earl of Strafford and the Lord Viscount Stafford, they had a convenient place appointed for

their managers, their Lordships must observe that both these trials were for high treason, and in Westminster Hall. But in all trials for misdemeanor there is not one precedent in their books that the House of Commons have ever, till this time, asked what they have desired on this occasion, and therefore their Lordships do insist on their resolution."

The Commons retired in high displeasure, and the disputes between the two Houses ran so high on this point of etiquette, that the preliminaries of a trumpety prosecution had nearly produced a serious rupture. Neither House could forget the era of the rebellion. In the mind of the Upper House especially, there lay fixed a troubled remembrance—*sedet altâ mente repostum*—that their adjournment for a day had lasted eleven years, and they would not abate one jot of their pretensions. The Commons yielded, and resolved to be present as a committee, even though no place were reserved, "in regard the matter was of great consequence to the trade of the kingdom." Finding their hope of escape by a quarrel and enforced prorogation abortive, seven of the parties spared all further difficulty of ceremonial, and pleaded guilty. Longueville alone demanded a trial, and, in consequence, escaped, Parliament being dissolved, before it could find leisure to investigate his case. The House, on the 4th July, 1697, demanded judgment, which consisted in fines merely, varying in amount, the highest on Goudet being £1500 and no more, so little necessity was there for wresting this fraud from the cognizance of the ordinary tribunals; but party strife leavened the case.\*

\* These smugglers might have been Irish Rapparees, so full of bulls was their disguised correspondence. They wrote, that the cart

In their next assault the Commons soared a higher flight, and attempted to strike down a more noble quarry—the Lord Chancellor Somers. Deformed, as their proceedings were with factious virulence and party hate, disfigured and disgraced, as the impeachment undoubtedly was, by haste and inconsistency, and passion, futile as it proved in its immediate consequences, a great constitutional lesson has been taught by the prosecution—the responsibility of ministers of the Crown. The halo of a great name cannot so far deceive as to induce us to join in the vulgar notion that the charge was wholly frivolous, and dictated solely by personal spleen. The history may be shortly told, and our readers shall form their judgment. From his retreat at Loo, the king planned the first partition treaty of the possessions of Spain; the death of Charles II., without children, being then in immediate prospect. It was well intentioned, to restrain the formidable pretensions of France beyond the Pyrenees, but ill-judged and disastrous. According to the severe commentary of Lord Bolingbroke,<sup>d</sup> “without the knowledge of the King of Spain, we disposed of his inheritance; without the consent of the Emperor, and in concert with the adverse party, we settled the rights contested between the houses of Austria and Bourbon; and we engaged to make this partition good by arms.” Even had the policy of this partition treaty been less questionable than it was, it

could not set out because of contrary winds,’ meaning the fleet. The proper names in their cipher are more happily chosen: the Duke of Leeds figures as Mr. Hosier, the Earl of Nottingham as Mr. Justice Fagg, Lord Godolphin as the Monkey, and Lord Churchill as the Jew.

<sup>d</sup> Letters on History.



ought to have been discussed by the cabinet, and not blindly adopted. The king wrote to his Chancellor, in the arbitrary style of a dictator sending instructions to be obeyed, not questioned. After mentioning the inclination of France to an agreement, he adds, "If it be fit this negotiation should be carried on, there is no time to be lost, and you will send me the full powers under the great seal, with the names in blank, to treat with Count Tallard." He gives a reason for this haste. "According to all intelligence, the King of Spain cannot outlive the month of October, and the least accident may carry him off any day."

Lord Somers' reply betrayed those apprehensions which his sagacity could not fail to suggest, subdued by a too courtier-like acquiescence in the royal pleasure. He hints dislike in every line, and concludes—"I humbly beg your majesty's pardon that these thoughts are so ill put together: these waters (he wrote from Tunbridge Wells) are known to discompose, and disturb the head, so as almost totally to disable one from writing. I should be extremely troubled if my absence from London has delayed the dispatch of the commission one day. You will be pleased to observe that two persons (as the commission is drawn) must be named in it, but the powers may be executed by either of them. I suppose your majesty will not think it proper to name commissioners that are not English or naturalized, in an affair of this nature. I pray God give your majesty honour and success in all your undertakings."

Thus, in compliance with the king's suggestive letter, without any direct, positive, command, the Chancellor affixed the great seal to a blank commission, with full powers, without any lawful warrant, not

having first communicated the missive to the rest of the lords justices of England, or advised with the king's privy council, or that section which formed the cabinet. For his own safety, the Chancellor suggested to Secretary Vernon that a warrant for affixing the great seal should be signed and dispatched; but, as no time was to be lost, he would not pause even for this measure of precaution. A *carte blanche* was sent for commissioners unnamed to sign whatever treaty they might think fit. The sealed powers having been forwarded, August 28th, the treaty was signed on the 11th October, at the Hague, by Lord Portland and Sir Joseph Williamson on the part of England. The death of the party most to be benefited rendered this intermeddling treaty of as little worth as the parchment on which it was written; and, when the treachery of France whispered its contents to the court of Madrid, the wounded spirit of the dying monarch retaliated by bequeathing his territories to the Bourbons. A second treaty for avoiding war only rendered it the more certain; and the bitter fruit of these tortuous intrigues was war with Spain, which would not submit to be partitioned, and war with France, which spurned its share in the iniquitous dismemberment, and claimed the whole kingdom by bequest.

A minute of a remarkable cabinet council that was held on this second partition treaty, found by Lord Hardwicke among the Somers' papers, proves the arbitrary reserve with which King William coerced his ministers, as he gave in monosyllables the word of command.\* "In answer to several objections made by the Lords present, Lord Portland, who had negotiated and signed the treaty, declared decisively, as

\* Hardwicke State Papers.

from the king, that, such as it was, it must be taken or left, for no alterations could be made ; on which one of the Lords present, probably Lord Somers himself, observed, ‘ If that was the case he saw no reason for calling them together.’ ” The councillor might not inaptly have followed up his just observation by withdrawing at once from futile attendance. Sir William Temple remarks truly in his *Memoirs*,<sup>f</sup> “ that when princes call their counsellors together it should be with a resolution to hear what they have to say before a measure is determined ; and that to have counsellors who do not give counsel is a solecism in government.” The Chancellor failed in his duty not less signally than the king—the one by exacting, the other by offering, implicit obedience. The impeaching Commons were embarrassed by their anxiety to screen some of the cabinet, and caught too hastily a pretext of quarrelling with the tribunal before which they had brought their accusation ; but, though the impeachment was summarily dismissed for want of their appearance, it taught a salutary lesson to all future chancellors, that they are not to advise or participate in any measure inconsistent with their own views of state policy, and then hope to escape from the responsibility attaching to their acts.

A still more important national question, on which the people were at that time almost equally divided, whether the title to the crown was founded on hereditary right or an original contract—upon arbitrary or free principles—whether the duty of the subject could ever be compatible with resistance—whether, under a government of constitutional monarchy, the subject was really a free man or a slave, formed ano-

<sup>f</sup> Sir W. Temple's *Memoirs*, vol. i.

ther great problem in the science of political economy, which the next exercise of the penal judicature of parliament, in the impeachment of the notorious Dr. Henry Sacheverell, completely solved. The great question at issue between the adherents of the Stuart and William—the duty of passive obedience—was tried by what lawyers term a feigned issue, in the presence of the queen, before her peers and prelates, Westminster Hall being one vast floor of anxious faces, and comprising, among its assembled thousands, the highest and fairest in the realm.

The true theory concerning the origin of civil government was debated there with as much fervour as the most momentous dogma in religion, and elicited a course of eloquence, both in the attack and defence, well worthy of the great occasion. We propose to give a complete summary of the proceedings, the most important in their progress and consequences that ever illustrated parliamentary annals.

The articles presented in the name of the Commons of England, began with a pompous preamble, lauding the glorious enterprise of the Prince of Orange to deliver this country from popery and arbitrary power, and charging Dr. Henry Sacheverell with preaching and printing his sermon with a wicked, malicious, and seditious intention to undermine and subvert her majesty's government and the Protestant succession, as by law established; to defame her majesty's administration; to asperse the memory of his late majesty; to traduce and condemn the late happy Revolution; to contradict and arraign the resolutions of both Houses of Parliament; to create jealousies and divisions among her majesty's subjects, and to incite them to sedition and rebellion.



The articles were divided into four heads. The first alleged that the preacher wickedly suggested, "That the necessary means used to bring about the said happy revolution were odious and unjustifiable. That his late majesty, in his declaration, disclaimed the least imputation of resistance ; and that to impute resistance to the said revolution, is to cast black and odious colours upon his late majesty and the revolution." The second charged the defendant with maintaining, "That the toleration granted by law is unreasonable, and the allowance of it unwarrantable ;" and, with asserting, "that he is a false brother with relation to God, religion, or the church, who defends toleration and liberty of conscience," on which account Archbishop Grindall was scurrilously called a false son of the church. The third article charged Dr. Sacheverell with falsely and seditiously suggesting and asserting, "That the Church of England is in a condition of great peril and adversity under her majesty's administration ;" and the fourth, with falsely suggesting, "That her majesty's administration, both in ecclesiastical and civil affairs, tends to the destruction of the constitution, and that there are men of characters and stations in church and state, who are false brethren, and do themselves weaken, undermine, and betray, and do encourage and put in the power of others who are professed enemies, to overturn and destroy the constitution and establishment ; and chargeth her majesty, and those in authority under her, both in church and state, with a general mal-administration."

To these specific charges Dr. Sacheverell made firm, decisive, and almost arrogant replies. He acknowledged himself to have suggested that his late majesty disclaimed resistance ; and declared that he hazarded

the suggestion, not to his dishonour, but in his vindication; citing the king's own declaration, and the homilies of the church, as his apology. As to toleration being unreasonable, he had not been able to inform himself that a toleration had been granted by law, but admitted that an act had passed for exempting their majesties' Protestant subjects, dissenting from the Church of England, from the penalties of certain laws; "which exemption the said Henry Sacheverell doth not anywhere maintain or suggest to be unreasonable, or that the allowance of it is unwarrantable. He had good authority from history for his assertion about Archbishop Grindall, but presumes that no words spoken of an archbishop, above 120 years since deceased, will, in construction of law, amount to a high crime and misdemeanor. As to the church being in peril, he affirms again, that there were never such outrageous blasphemies against God and all religion, natural as well as revealed, vented publicly with impunity in any Christian church or kingdom in the whole world as at present in our own. As to the fourth article, he humbly hopes that bare suggestions or insinuations, could they with any colour or probability be made out, as he is fully satisfied they cannot, will not, under this most mild and gracious government (at a time when several new laws have been made for securing the liberties of the subject), by your lordships, the great guardians of our laws and liberties, be adjudged sufficient to involve an English subject in the guilt and punishment of high crimes and misdemeanors."

The Commons having rejoined in support of the truth of their charge, the attorney-general proceeded to adduce the evidence, saying, "out of his own

mouth we shall charge him, and by his own words and sermons we shall convict him." Mr. Lechmere, who assisted the attorney-general in stating the grounds of their charge, declared, with much point, that, "in framing their accusation, the Commons have thought fit, by a preamble to their articles, to lay before you the grounds of their accusation in terms the most cogent and expressive; to the end that your lordships might have early and perfect notice of the grounds on which the Commons intended to proceed; that your lordships and the whole kingdom might know the unanimous and hearty zeal of the Commons, to assert the justice of the late happy revolution, and the foundations of her majesty's government and administration; and that the judgment of the Commons, on this weighty occasion, might stand fully on the records of parliament, and be transmitted to all posterity. The Commons esteem it a high reflection on religion itself and the Church of England, to charge its purest doctrines with such constructions, by which all irreligion and oppression would be authorized."

The counsel for the impeached divine having owned the dedication and sermon, they were read at length, and the Lords adjourned. The three following days were occupied by the managers in enlarging on the different articles, three or four of their ablest orators and lawyers pricking forth in defence of each charge separately, as at some great constitutional tournament. Sir Joseph Jekyll, Sir John Holland, Mr. Walpole, Sir John Hawles, and General Stanhope, declaimed at length on the guilt which the first article imputed, and the reading of the sermon proved. Sir Joseph, with equal simplicity and clearness, demonstrated the truth of the Revolution upon the principle

of an original compact between the king and his people.

“As the law is the only measure of the prince’s authority and the people’s subjection, so the law derives its being and efficacy from common consent ; and to place it on any other foundation than common consent, is to take away the obligation this notion of common consent puts both prince and people under to observe the laws. And upon this solid and rational foundation, the lawyers in all ages have placed that obligation, as appears by all our law-books. But instead of this, of later times, patriarchal and other fantastical schemes have been framed, to rest the authority of the law upon ; and so questions of divinity have been blended with questions of law, when it is plain that religion hath nothing to do to extend the authority of the prince or the submission of the subject, but only to secure the legal authority of the one, and enforce the due submission of the other, from the consideration of higher rewards and heavier punishments.

“The constitution of this country had been invaded before the Prince of Orange set sail. The whole tenor of the administration then in being was agreed by all to be a total departure from the constitution ; the nation was at that time united in that opinion, all but the criminal part of it. And as the nation joined in the judgment of their disease, so they did in the remedy. They saw there was no remedy left but the last ; and when that remedy took place, the whole frame of the government was restored entire and unhurt. This showed the excellent temper the nation was in at that time, that, after such provocations from an abuse of the regal power and such a



convulsion, no one part of the constitution was altered, or suffered the least damage ; but, on the contrary, the whole received new life and vigour."

Upon the prince's own proclamation, liable to the charge of insincerity and double-dealing, the clear-headed lawyer was constrained to put an artful gloss, that the king disclaimed all imputation of resistance that tended to conquest. "The Commons should think themselves ungrateful for the deliverance, if they did not vindicate the honour of the late king and of those illustrious persons who, upon his invitation, defended the constitution at that time by resistance, and declare that this resistance was lawful, honourable, and just. The principle of the utter illegality of resistance upon any pretence, the Commons must always resent with the utmost detestation, for, if the resistance at the Revolution was illegal, the Revolution settled in usurpation, and the Act of Settlement can have no greater force and authority than an act passed under an usurper "

To this admirable argument in defence of constitutional rights, Mr. Walpole succeeded with a rhetorical and less felicitous apology for the impeachment, which reveals the speaker's dislike of literature—"Mercenary scribblers and the hackney pens of a discontented party might have been left to the common course of the law, and to the ordinary proceedings of the courts below. But, my lords, when the trumpet is sounded in Sion ; when the pulpit takes up the cudgels ; when the cause of the enemies of our government is called the cause of God and of the church ; when this bitter and poisonous pill is gilded over with the specious name of loyalty, and the people are taught for their souls' and consciences' sake to

swallow these pernicious doctrines ; when, instead of sound religion, divinity, and morality, factious and seditious discourses are become the constant entertainments of some congregations, the Commons cannot but think it high time to put a stop to this growing evil. As this grand remedy had been deemed by one House of Parliament most expedient, they trusted that the other would render it most effectual. I hope your just judgment in this case will convince the world that every seditious, discontented, hot-headed, ungifted, unedifying preacher (the Doctor will pardon me for borrowing one string of epithets from him, and for once using a little of his own language), who had no hopes of distinguishing himself in the world but by a matchless indiscretion, may not advance with impunity, doctrines destructive of the peace and quiet of her majesty's government and the Protestant succession, and prepare the minds of the people for an alteration, by giving them ill impressions of the present establishment and its administration. From your lordships' justice the Commons hope that his punishment will be adequate to the heinousness of his offence."

General Stanhope denounced the tenets of these passive-obedience gentlemen, and the baneful consequences of their doctrines, with all the honest warmth of a soldier: "The true and real object of their darling doctrines, such as *jus divinum*, non-resistance, the undefeasible, unalienable, hereditary right, the true object, I say, of these doctrines, is a prince on the other side of the water! If they are in the right, my lords, what are the consequences? The queen is not a queen:—your lordships are not a House of Lords, for you are not duly summoned by legal writ:

—we are no House of Commons, for the same reason:—all the taxes which have been raised for this twenty years have been arbitrary and illegal extortions:—all the blood of so many brave men who have died (as they thought) in the service of their country, has been spilt in defence of an usurpation, and they were only so many rebels and traitors.”

With his indignant abhorrence of such heresies, the military orator united a contemptuous scorn of the accused, alluding in accents of bitter irony to the pious son of the church, the honest citizen, the loyal subject, forsooth, who uttered these wild rhapsodies. “This man, my lords, is an inconsiderable tool of a party, no ways worth the trouble we have given your lordships; but we look upon it that your Lordships’ judgment in this case will be giving a sanction which shall determine what doctrines of this kind shall or shall not be preached. We do hope that your Lordships will inflict such *condign punishment* on this offender as may deter others from the like insolence for the future.”

The reverend defendant, who had listened with imperturbable front and smiling composure to the anathemas of preceding speakers, grew pale and confused at these volleys, as it were, of red-hot shot, and complained that such a tone of vehement contempt reflected on his order.

To Sir Peter King, whose early studies in church history had rendered him peculiarly qualified for the office, was consigned the task of vindicating the public duty of toleration, the first fruits of the Revolution, the first product of the laws. “It is true that the word toleration is not mentioned in the Act 1 William and Mary; neither is the word indulgence to be found

in that law, but everybody knows that the exemption granted by that act is commonly called the toleration, and the act itself the Toleration Act. What is the intent of that act but to tolerate and allow persons qualified to exercise their religion, notwithstanding penal laws to the contrary? Toleration is really a word of less import than indulgence; it is a bare permission and allowance; and this word has gained such a known and fixed notion and signification in every one's mind, that, whenever it is mentioned, there is not any doubt what is meant by it; it is now become a word of art, that not only in common conversation, but even in the most public acts of state, the exemption granted by this very statute is called the Toleration. Dr. Sacheverell had commended the wholesome severities by which Queen Elizabeth utterly suppressed the Dissenters. He (Sir Peter King) would give a short history of these wholesome severities! By the statute 35 Elizabeth, any person willingly present at a conventicle was to be committed to prison till he should conform and come to church, and if within three months he should not conform and come to church, then such offender should abjure the realm, and if he should not depart within the time appointed, or return without the Queen's licence, every person so offending should be a felon, without benefit of clergy! Upon the reading of this blood-thirsty statute, the Recorder added a quaint commentary:—‘This is one of the severities of Queen Elizabeth's reign; whether it be a wholesome severity or not, human nature will determine.’ The doctor's scurrility against a deceased prelate was only alluded to, that it might shew his zeal against toleration, that he was not contented with censuring



the toleration itself, but rakes into the ashes of an archbishop that had been in his grave 120 years, and blackens his memory because he was for the toleration of those people who are now by law tolerated."

The comprehensive curse in the sermon upon the false brother who defends toleration was cited by Mr. Cowper, the chancellor's brother, assigned also to the proof of the second article: "'And, as he chose it in this world, appoints him in the next his portion with hypocrites and unbelievers, with all liars that have their part in the lake which burns with fire and brimstone, with the grand father of falsehood, the devil, and his angels. And so here we leave our false brethren in the company they always kept correspondence with.' This, my lords, is a most dreadful unchristian sentence; a sentence so barbarous, so astonishing, that I am at a loss to imagine how it could enter into the mind of man to conceive it. By the way," remarked the vindicator of insulted humanity, "what a spirit is the man of, who can find nothing to commend in the reign of that glorious queen, but the blackest and worst part of it!"

At the close of an animated defence of the third article, Mr. Dolben was betrayed by his feelings into a startling indiscretion: "We hope the record of this proceeding will remain a lasting monument to deter a successor that may inherit her crown, but not her virtues, from attempting to invade the laws or her people's rights, and if not, that it will be a noble precedent to excite our posterity to wrestle and tug for liberty as we have done. Hard is the fate of that people who are betrayed at home to a perpetual condition of bondage by such false brethren as are at your lordships' bar." As the impeached divine was surrounded

at the bar by troops of friends, Dr. Atterbury, and several of the queen's chaplains, Sir Simon Harcourt, and four or five other counsel, these aspersions in the plural gave great umbrage, as all might seem to be included. On the motion of Lord Haversham, the Lords adjourned to their House, and, on returning, demanded an explanation, which Mr. Dolben, in some confusion, was forced to give; that the words in the plural related only to the prisoner at the bar.

The palm of eloquence and argument was awarded by general assent to Serjeant Parker (afterwards the unhappy Earl of Macclesfield), who had been deputed to open the fourth article, and, by a searching analysis of the sermon, proved that it was a general arraignment of the government throughout, and, as such, the preacher must answer for it. To one of his illustrations from Scripture, that the Church was in danger, the serjeant gave a dexterous turn: "There is a remarkable story in the Bible about a mistake of danger, which the doctor makes a handle for his purpose. Accordingly, he says, 'When Elisha, the great prophet of God, was surrounded with an host of enemies that sought for his life, his blind servant beheld not the peril his master was in, until his eyes were opened by a miracle, and he found himself in the midst of horses and chariots of fire.' This story, thus told, is extremely happy for him, for hence the people are to understand him to be the inspired prophet, and the Queen, Lords, and Commons, blind at least, though not his servants. But the story in holy writ is directly contrary, and it was only the blind servant fancied they were in danger, when really they were not."

After reminding the spiritual trumpeter that, though the priests of old were literally to sound the

silver trumpets to the army in the field, they never sounded them from the pulpit ; he distinguished his case from that of the reverend clergy of the Church of England. “My Lords, the Commons have the greatest and justest veneration for the clergy of the Church of England, who are glorious through the whole Christian world for their preaching and writing, for their steadiness to the Protestant religion, when it was in the utmost danger. They look upon the order as a body of men that are the great instruments through whose assistance the Divine Providence conveys inestimable advantages to us. They look upon the church established here as the best and surest bulwark against popery ; and that, therefore, all respect and encouragement is due to the clergy ; and it is with regret and trouble that they find themselves obliged to bring before your lordships, in this manner, one of that order. But when we consider Dr. Sacheverell stripping himself of all the becoming qualities proper for his order, nay of that peaceful and charitable temper, which the Christian religion requires of all its professors, deserting the example of our Lord and Master and of his holy Apostles ; and, with rancour and uncharitableness, branding all that differ from him, even through ignorance, with the titles of hypocrites, rebels, traitors, devils ; reviling them, exposing them, conducting them to hell, and leaving them there ; treating every man that falls in his way worse than Michael the Archangel used the devil ; coming himself more near the character in St. Jude (part of which he would apply to others), ‘despising dominion, speaking evil of dignities, like raging waves of the sea foaming out his own shame ;’ forgetting (when his text and doctrine led to it) to

recommend the peace of his country, at a time when all Europe is in war, and nothing can preserve us from falling into the hands of the great enemy and oppressor but our unanimity under her majesty ; then labouring to sap the establishment, and railing and declaiming against the government, crying to arms, and blowing a trumpet in Sion, to engage his country in seditions and tumults, and overthrow the best constitution, and betray the best queen that ever made a people happy, and this with Scripture in his mouth ; the Commons looked upon him, by this behaviour, to have severed himself from all the rest of the clergy, and thought it their duty to bring to justice such a criminal, and are in no fear of being thought discouragers of those who preach virtue and piety ; because they, in the supreme court of justice, prosecute him that preaches sedition and rebellion, or to have any design to lessen the respect and honour that is due to the clergy, by bringing him to punishment that disgraces the order."

A short summing up from Mr. Lechmere concluded, on the third day, this brilliant display of parliamentary eloquence, by far the most finished specimen of argumentative oratory that the annals of the House had yet furnished. The managers were encountered, on the doctor's behalf, with at least as able advocacy and legal acumen. He had secured the assistance of Sir Simon Harcourt and Mr. Phipps, two of the most distinguished lawyers of the day ; Mr. Dodd, a clever pleader ; Mr. Dee, a modest junior, and an acute civilian, Dr. Henchman. His senior counsel, was elected member for Abingdon, the day before entering upon the defence ; but suppressed the intelligence, that his friend might not want his valu-



able succour. He ushered in Dr. Sacheverell to the notice of the Peers as an innocent and persecuted divine, who had taken the oath of allegiance, signed the association, and subscribed the abjuration; and who has indeed, in accordance with his duty as a good churchman, affirmed the utter illegality of resistance, on any pretence whatsoever, to the supreme power; but it cannot be pretended there was any such resistance used at the Revolution. "The supreme power in this kingdom is the legislative power, and the Revolution took effect by the Lords and Commons concurring and assisting in it. But unfortunately for him he was a churchman: had he been a dissenter, as one of the gentlemen of the House of Commons (Walpole) affirmed, they would not have thought fit to have prosecuted him."

After relinquishing the notions of an unlimited passive obedience and non-resistance, as absurd, he distinguished the doctrine advanced by his client, and argued that the gospel rule of obedience ought to be pressed by a minister, and the extraordinary exception implied. "My lords, Dr. Sacheverell does not contend for this doctrine of slavery, nor is there anything mentioned in his sermon of such an obedience or non-resistance. There is but this small difference between the gentlemen of the House of Commons, who think this expression so highly criminal and the doctor, who still conceives it to be otherwise, whether, when the general rule of obedience is taught, the particular exceptions which may be made out of that rule are not more properly understood or implied. Every minister of the gospel is sufficiently instructed from the doctrine of his church, from the written laws of the land, and the law of God, to press the

general duty of obedience ; but such extraordinary cases, wherein resistance is lawful, wherein it becomes an indispensable duty, are no where laid down. The same apostle, who enjoins obedience and non-resistance to the higher powers, commands also servants to obey their masters, and children their parents in all things ; notwithstanding which general precepts many cases may happen, wherein it may be not only unfit but sinful for servants to obey their masters, or children their parents. And yet the apostle never thought it proper to state or mention those cases, but contented himself to press the duty of subjection in general, leaving such cases, when they happened, to justify themselves."

By a host of authorities from the homilies, articles, and sermons, the convincing advocate proceeded to prove that his client's assertion of the illegality of resistance to the supreme power, on any pretence whatever, without expressing any exception, was warranted by the authority of the Church of England ; and to contend more doubtfully, from the statute law of the realm, that his manner of expression was agreeable to the law of England. After reading the homily against Rebellion, Sir Simon Harcourt exclaimed triumphantly, "Is it criminal in any man to preach that doctrine which it is his duty to read ! Since the doctor chose rather to preach than to read a homily on that day, how could he better comply with the command of her late majesty than by preaching the same doctrine as was contained in those homilies he was commanded to read on that day, if he did not preach. Bishops were appealed to as vouchers before the Revolution ; and, to prove that this tenet of the church did not expire at that epoch, he summoned as witnesses three archbishops and eleven bishops, the majority of whom were then

sitting as judges. Are the same words coming out of their mouths to be received as oracles of truth, but spoke by the doctor, fit for articles of impeachment? By the Militia Act it is declared, 'That neither both, nor either of, the Houses of Parliament can, or lawfully may, raise or levy any war, offensive or defensive, against his majesty, his heirs, or lawful successors.' When I perused this last declaration in the recital of the acts, I read carefully to the end of it to look for the exception, but could find none. If there be no exception in that act, but that it stands as a general declaration of the law; if neither nor both the Houses of Parliament can, or may, raise or levy war, offensive or defensive, against the king, is it a high crime and misdemeanor to assert, in general terms, that resistance to our prince is unlawful? Pray, my lords, compare the doctor's assertion in his sermon with the declaration in this last act of Parliament."

This admirable speech appears to have been broken off abruptly, for the peroration is unworthy of the finish of the rest, like some miserable postern, hastily huddled up to a magnificent temple. "He is not the person he hath been represented, he hath no disloyal thoughts about him; sure I am he would rather die in her majesty's defence. We shall show your lordships that there are such as run most vile comparisons between the Revolution and the most execrable murder of King Charles I., and can find no better difference between them than this abominable distinction of a wet martyrdom and a dry one!"

Mr. Dodd reiterated his leader's argument, and asserted categorically that no minister of the Gospel could use other terms than those which his client had adopted. "He must preach the general proposition—he must inculcate the general rule—and he must

preach in the words that the laws of God and of this land have delivered it in ; he must not vary it to find meanings, to help the people, like a good casuist, to distinguish themselves out of their allegiance.”

His brother jacobite, Mr. Phipps, the future Chancellor of Ireland, who, when dismissed from office, resumed his practice at the bar, and threw the shield of his eloquence before Bishop Atterbury, defended a sermon whose sentiments he inwardly approved with the warmth of a pupil brought up at the feet of Gamaliel. “ My lords, by the law of England men are not to be harangued out of their lives, liberties, or estates, but, as I have observed, it must be plain and positive proof alone that can subject them to a forfeiture ; and I submit to your lordships, where a man affirms a thing in his sermon, if an averment by anybody else that he means quite the contrary be a sufficient evidence to convict a man of high crimes and misdemeanours.”

Mr. Phipps drew a plausible distinction between the real and supposed meaning of the resistance impugned, and related an interesting anecdote from history, to show the tenets of the church :—“ No, my lords, it is not the Revolution in 1688, but the Revolution in 1648, that he endeavours to blacken, and the principles by which that was to pass. When the Duke of Monmouth was to be executed, his present grace the Archbishop, the present Lord Bishop of Bath and Wells, the then Bishops of Ely and Bath and Wells, were appointed by the king to attend his grace. They pressed him to make a particular confession of his crime, and to acknowledge himself guilty of rebellion. His answer was, ‘ he died a Protestant of the Church of England.’ They replied, ‘ My lord,



if you be of the Church of England you must acknowledge the doctrine of non-resistance to be true.' ”

As a high tory, Mr. Phipps could not suffer the levelling tenet of Sir Joseph Jekyll to pass without controversy, but was ready to fight *à l'outrance* against his republican theory. “When the original contract was made, that learned gentleman did not think fit to inform us. Was it before Magna Charta? If so, why not comprised in it? all the liberties the subject then laid claim to being included in that act; and it is strange, a thing of that moment, and which was the source and spring of all their liberties, should not be so much as mentioned in it. I never met with it in any of our law-books in my little experience. I never heard it urged in any court before. Was it before the statute of 25 Edward III.? I never knew it pleaded to any indictment for high treason, nor objected to enervate or take off the force of that statute. And, our law-books being silent in it, I think it is too tender a point for us, who are no members of any part of the legislature, to meddle with. And, therefore, until the legislature have declared what the original contract is, and determined what act of the supreme executive power shall amount to a dissolution of that original contract, and discharge the subjects from their allegiance, I must beg pardon, if I think that, as to resistance in general, the law stands still upon the foot of the 25th Edward III., and that all resistance, except in the case of the Revolution, is still treason within that act.”

Mr. Dee, the junior counsel, prefaced his few observations with a modest remark, which all juniors at the bar might do well to imitate:—“So much has been said, and so well pressed by the gentlemen who have gone before me, that I should think myself very un-

mannerly to spend your lordships' time in repeating it in worse words." He ventured, however, on one splendid sophism—"Certainly there is no room to suppose any reflection to be made on his late majesty; for surely his majesty wanted no excuse for his coming hither, nor could he be guilty of anything that we call resistance. He was a sovereign prince, and might do what he thought fit. He owed no allegiance to any one, so could not be said to resist, in the sense resistance bears in the doctor's sermon, which is the resistance by subjects to the supreme power!" The learned civilian inquired, with grave vehemence, "what further vindication can be necessary? Or how can a good subject of the realm and a true son of the church better make his defence than from the laws of the one and the doctrine of the other?"

The vouchers for the orthodoxy of the sermons were then read, and occupied a whole spring morning in the recitation. In the reading of one of the sermons, counsel, in their rashness, caught a Tartar. Having cited a passage from a discourse preached before the House of Lords in 1700, by the Archbishop of York—"So long as the text of St. Paul stands in our bibles, the doctrine of non-resistance and passive obedience must be of obligation to all Christians." Here the citation was meant to end, but the vigilant Walpole directed the clerk of parliament to read on, and obtained a just triumph over the counsel for making a garbled and disingenuous quotation. "Care must be taken that this general doctrine be not misapplied: as the laws of the land are the measures of our active obedience, so are also the same laws the measures of our submission; and as we are not bound to obey, but where the laws and constitution require our obedience,

so neither are we bound to submit but as the laws and constitution do require our submission."

Not content with the cheers and laughter which this passage afforded him, Walpole desired that one paragraph more might be read, which, had the sermon not been written some years previously, might have borne a personal application. "If, indeed, a preacher should in the pulpit presume to give his judgment about the management of public affairs, or to lay down doctrines, as from Christ, about the forms and models of kingdoms or commonwealths, or to adjust the limits of the prerogative of the prince or of the liberties of the subject in our present government; I say, if a divine should meddle with such matters as these in his sermons, I do not know how he can be excused from the just censure of meddling with things that nothing concern him: this is, indeed, a practising in state-matters, and is usurping an office that belongs to another profession, and to men of another character; and I should account it every whit as indecent in a clergyman to take upon him to deal in these points, as it would be for him to determine titles of land in the pulpit, which are in dispute in Westminster Hall."

It will be seen at once by all who are familiar with the sudden turns and humours of a popular assembly, how much the weight of the most apposite citations was lessened by this unlucky reference. In defence of the anathema against toleration, a far less strenuous and successful struggle was made, for, in truth, little could be said to justify or excuse such uncharitable and unchristian railings. All indeed that might be alleged in excuse, by way of subtle distinctions and refined explanations, was attempted. "We apprehend

the fault the doctor finds in his sermon is against a universal general toleration, that tends to a dissolution of all things ; and such a toleration would make religion like that of the Samaritans, a mixture of all sorts, that was odious to the world and an abomination to the Jews. His thunders are not pointed at the dissenters, but properly intended against irreligion ; and the sentence that he dares any power on earth to reverse is such, and such only, as is ratified in heaven." "The dissenters," said Mr. Phipps, by an unfounded circumscribing of the term 'dissent'—"the dissenters do not differ from us in matters of faith, but in matters of form and ceremony : if they differed from us in matters of faith, they would be heretics, and heresy was never intended to be tolerated by the Act of Indulgence ; and, therefore, what the doctor says in this paragraph can never be taken to be a reflection on the Toleration."

To prove the church really in danger, a long list of books was paraded, full of blasphemy, irreligion, and heresy, and pamphlets subversive of the first principles of government. Never, since the collection of magical works burnt at Ephesus, was there a library which more richly deserved the flames. "When the Church," said Dodd, "is run down, and the clergy vilified ; when they tell us a grey coat has as much authority to administer the sacrament as a black coat, and that a countryman may make as good a priest as the parson of the parish, these things may excuse the zeal of the doctor in so warmly reprehending them. Is not the name of God forgot in the place of his miraculous birth ? And is not the light of the Gospel totally extinguished where it at first so gloriously shined ? And by what means ? By infidelity, profaneness, and im-



morality ! And may not the same causes produce the same effects ? Surely, they urged, it is hard that a minister may not from his pulpit mention those dangers without offence which he is specially commanded to pray against in his desk."

The ears of all pious and devout peers were shocked for some hours with the recital of Asgill's wild visions of an escape from death, and the strange echoes of Jacobite raving :—" If ' jure divino ' comes upon the stage, the Queen has no more title to the crown than my Lord Mayor's horse ! All the people are bound by the laws of God to depose her as an usurper, and restore their rightful and lawful king, James III." To this the comparatively innocent question was added, " What can be said for members sitting in the House to do nothing, making long speeches without meaning, and voting bills without design to have them pass ? "

The last charge was disposed of more summarily. " The words ministers and ministry were not to be found in the whole sermon ; if the doctor meant to excite the people to rebellion, he ought rather to be pitied as a weak, foolish man than punished as a cunning incendiary. He merely taught what the rubric of the Liturgy expressly commanded him to teach on that day."

After the royal proclamation against vice and profaneness had been read, petition was made that the Lords would be pleased to hear the doctor speak for himself. Sacheverell immediately stepped forward, armed with all the advantages that a pleasing person, a choice delivery, and a good voice can bestow ; of a fair and ruddy countenance, too complacent to look the martyr, and scarcely meek enough for a saint. After a

graceful apology for not being altogether silent in a cause wherein the doctrine of his church, the dignity of the holy order to which he belonged, and even the common interest of Christianity itself, were so nearly concerned, he made some forcible remarks on the vagueness of the charges and the illiberality with which they had been pressed against him. "My lords, the charge brought against me in these articles is of a very high and heinous nature, and, had it been as clearly made out as it has been strongly affirmed, it would justly have exposed me to a very severe sentence. But the more heinous the charge is, the more evident and undeniable, I should think, the proof ought to be. And how, my lords, has this charge been supported in the several articles of it? By plain, direct, and express passages produced and read to your lordships out of my sermons, or by intendments, unnecessary implications, and strained constructions? by laying entire sentences before your lordships, and relying upon what was manifestly contained in them, or by piecing broken sentences, and conjoining distant and independent passages, in order to make me speak what I never thought of?

"No favourable allowances have been made to a minister of the Gospel discharging the duty of his function, and rebuking vice and irreligion, with an honest and well-meant zeal; but sometimes perhaps carrying him into expressions too open and unguarded. I could add, my lords, if such a complaint might not be thought improper from one in my circumstances, that, in the course of my accusation, I have been styled a criminal, and treated as such by some of these honourable gentlemen, with a degree of scorn and indignity, from which I hoped my sacred pro-

fession, my present unhappy condition, and a regard to this solemn and awful judicature, might have screened me."

The shrewd remark, "I should think that there cannot be a clearer indication that I am not guilty of having asserted what I am charged by the several articles to have said, than that so many hours' learning and eloquence have been employed in proving me to have said it," anticipates the criticism of a later age, on Sir John Scott's speech in a prosecution for high treason, that a prisoner must be innocent of the treason which it required nine hours' oratory to prove.

The artful way in which Dr. Sacheverell distinguished his audience, and appealed as well to the judges as the prelates, was afterwards imitated with sublime effect by Lord Chatham. "Since it is my singular misfortune to be accused for what others have received thanks, in some instances conveyed to them by several of the managers themselves, I do, with all humble confidence, rely upon your lordships' justice; not doubting but that the learned judges, if thought necessary to be consulted, will declare what I have in this case asserted to be warranted by law, and the right reverend the bishops will affirm it to be the doctrine of the Gospel."

Dr. Sacheverell sought, by a general disclaimer, to deny the want of charity and the use of party watch-words, with which the discourse abounded, but which he knew the majority of his hearers would be too idle to read. "Of toleration, *a word unknown to our laws*, and implying, as I am informed, much more than our lawgivers designed, if I have said anything offensive, I may, I hope, reasonably presume that it will not be judged by your lordships in any wise to reflect on

that act of exemption, which I have spoken of in terms no ways, I think, misbecoming a good subject, or betraying any want of Christian moderation. If the church be in danger, when the Christian religion is evidently so, I hope it will be thought no crime to say it has scarce ever been in greater danger than it is now, since Christ had a church upon earth. Upon the whole, therefore, my lords, I hope it appears that I am not guilty of any of the crimes of which I am accused ; that I have transgressed no law of the land, neither statute nor common law, relating either to her majesty or to my fellow-subjects, to the church or to the state ; and that I may, with all humility, apply to my own case the words of that blessed apostle, whose doctrine I defend, and whose example I hope I shall have the grace to follow, ‘ Neither against the law, nor against the temple, nor against Cæsar have I offended anything at all.’ ”

Not content with defending his writings by the doctrines of the church, the pathetic orator made a dramatic appeal to the God of Truth for the purity of his motives : “ I call the searcher of hearts to witness, in the most solemn and religious manner, as I expect to be acquitted before God and his holy angels, at that dreadful tribunal before which not only I, but all the world, *even* your lordships who now sit in judgment upon me, must appear, to be acquitted or condemned, that I had no such wicked, seditious, or malicious intentions.”

As the chief object of the divine and the eloquent composers who prepared his speech was to excite compassion, he enlarged in a pathetic peroration on his hardships and sufferings : “ To the great misfortune of falling under the displeasure of that ho-



nourable house, I might add that of a long and close confinement, and of an expense no ways proportioned to my circumstances. These, my lords, are afflictions which can be conceived by nobody, except by him who has been so unhappy as to feel the weight of them. And, among these, I reckon it not the least of my sufferings, that I have been for so long a time debarred from taking heed to that flock over which the Holy Ghost hath made me an overseer. I am made a gazing-stock, both by reproaches and afflictions, and a spectacle to the whole world. I have stood in this place, day after day, to hear myself accused of the blackest crimes and openly reviled.”— But he drew his consolation from a pure source, a good cause and a good conscience.—“And so, my lords, with all humility and resignation, I submit myself to your lordships’ judgment, be it what it will: one thing, I am sure it can never take from me, the power of wishing and praying; and, whether in prosperity or adversity, whether I am acquitted or condemned, I shall always pray for the queen my sovereign, for your lordships my judges, and for the Commons my accusers; most earnestly beseeching Almighty God to deliver all orders and degrees of men amongst us from all false doctrine, heresy and schism, from hardness of heart, from contempt of his word and commandment, from envy, hatred and malice, and all uncharitableness.”

The report of the trial drily concludes—“Then the Lords adjourned to the House above;” but before their adjournment Doctor Sacheverell might discover his approaching triumph in the marked effects of his oratory, the joyful looks of the tory peers, the tears and faintings of the ladies, who had filled the hall as

champions ; the congratulations of the fifty clergymen who stood below the bar as his body guard ; the cheers of the high-church populace, eager in their zeal to burn down more meeting-houses ; in the grave displeasure of the managers of the impeachment. On the following day they returned to the charge, article by article, as if with the heavy battery of reason and argument they could dissipate the wreaths of mist in which the reverend doctor had involved his audience.

To Sir Joseph Jekyll, who led the van, great merit is due for the clear, calm, and convincing manner in which he refuted the fallacies of the defence. He congratulated the Commons on one success, at least, of their charge, that in full parliament the erroneous doctrine of unlimited non-resistance has been given up and disclaimed. "The Revolution," he repeated, "did not introduce any innovation ; it was a restoration of the ancient, fundamental condition of the kingdom, and giving it its proper force and energy. The reason why the laws condemned resistance without exception was easily furnished. All laws have an exception implied in them. The wisdom of the law in not expressing the exception is plain. It is neither decent, nor probably would have a good effect, to put odious cases, such as a prince's overturning the constitution. The Roman law did not provide against parricide, nor doth the English law neither, since it hath no distinct punishment for that kind of murder, though it hath some for others, which are called petty treasons. Laws are framed upon a view of ordinary and common cases. The homilies, though generally approved of by the Church of England, were not of binding obligation in all their dogmas. No more is intended by the subscription to

the articles, but that the doctrine contained in the homilies is right in the main, and not that every sentence in them is so ; for, in this last sense, I believe, never any divine subscribed the articles ; and it will be hard to name any preacher or writer of note, who has not contradicted some passage or other in them ;—nay, as to one, the general and approved practice of the church is against it. I mean that passage which condemns the use of organs in churches.” Sir Joseph, having cleared the Bishop of Salisbury from a partial quotation, pronounced his eulogy in a neat epigram, that he was a prelate, whose services would never be forgotten by one part of the nation or forgiven by another.

The replies of the other managers need not detain us long. Mr. Lechmere clearly proved the doctor’s guilt to consist, not in enforcing the general duty of obedience, but in preaching against an excepted case, after he had stated the exception. “For, though the general doctrine of non-resistance, the doctrine of the Church of England as stated in her homilies, or elsewhere delivered, by which the general duty of subjects to the higher powers is taught, be owned to be, as unquestionably it is, a godly and wholesome doctrine—though this general doctrine has been constantly inculcated by the reverend fathers of the church, dead and living, and preached by them as a preservative against the popish doctrine of deposing princes, and as the ordinary rule of obedience ; and though the same doctrine has been preached, maintained, and avowed by our most orthodox and able divines from the time of the Reformation ; and how innocent a man soever Doctor Sacheverell had been, if, with an honest and well-meant zeal, he had preached the same doctrine in

the same general terms in which he found it delivered by the apostles of Christ, as taught by the homilies and the reverend fathers of our church ; and, in imitation of those great examples, had only pressed the general duty of obedience and the illegality of resistance, without taking notice of any exception ; yet, what excuse can be derived for the matter now in question from such considerations as these in favour of the doctor, who has not only asserted the general rule in terms of the greatest latitude, but has expressly mentioned and disallowed the exception of the resistance which brought about the Revolution ?”

Mr. Thompson made a classical allusion to the high churchman’s pertinacity and deserved punishment :—“ I may apply to him the saying to a goat browsing on a vine, and which was applied to one of another function upon such an occasion, who had defied the power of Parliament—

‘ Rode, caper, vitem, tamen hinc, cum stabis ad aras,  
In tua quod fundi cornua possit, erit.’ ”

Serjeant Parker concluded with a crushing speech, severely rebuking the champion of the church for his profane insincerity, and with an ironical compliment to the composer of the hapsody, expressing a wish that it had been more consonant with the doctor’s real sentiments and the tone of his discourse. Under the weight of that grave moral lecture read by the stern lawyer to the fashionable divine he could not but shrink, for his castigation was administered with no sparing hand. “ My lords, I am amazed at the doctor’s solemn protestations. I will avoid hard words, as much as I can ; but if, when he calls God to witness in so solemn a manner, he should then



speaking without foundation of truth, plainly against his sermon, and be even then using the little arts of evasion and diverting the question, instead of that sincerity which ought to accompany so solemn an oath, I leave it to your lordships to give a name to such behaviour. I only wish, for the doctor's sake, the composer had preserved a little more regard, as well to what was fit to be said here (where the truth of the whole matter is known), as to what was fit to be said abroad, and given it a little more resemblance of the doctor and his sermon; that he had not calculated so many parts of it for an appeal to the people, and to obtain their acquittal upon his own word. And I must needs say for myself (though my liking or disliking it is of very little moment), had it had fewer and less solemn appeals to God Almighty, or more truth, or I known less of the matter, I should have liked it much better. My lords, he has made an appearance before your lordships in a manner very extraordinary, not only as in a defence of a prosecution, but as in a most solemn act of devotion before the most august judicature on earth, appealing to a yet greater in heaven. But with what sincerity, what candour, or what sense of that which he has done! I am amazed that a person in holy orders, in his distinguished habit, before this awful assembly, should dare to take the tremendous name of God into his lips, and appeal to him for the sincerity and integrity of his heart, at that very time when he stands charged with this black crime, and is neither able to repel it, nor has the sincerity and honesty to repent—to take shame upon himself in the most public manner, and to ask pardon of God and the world for it.”

This was the true scourge of rhetoric in which

Tully exults, "Hæc lacerat hæc verberat, hæc, hæc cruentat oratio." With this flagellation, richly merited, Dr. Sacheverell escaped ; for, though 69 peers against 52 pronounced him guilty, their sentence was a mockery of punishment. Some lords insisted that he should be suspended seven years and seven months from preaching, by some mystical allusion to the seven churches and seven golden candlesticks; but even this recondite reckoning with a fanatic appeared too severe: "And so," writes the mortified Godolphin, "all this bustle and fatigue ends in no more but a suspension of three years."

This lucky pseudo-martyr was idolized in his own day far beyond his deserts, and has ever since, by a just retribution, been vilified at least as much as his demerits justify. The academical portion of his career was far from discreditable. Though not the Sacheverell with whom he has been often confounded, to whom Addison dedicated some verses,<sup>f</sup> he was a friend of that elegant scholar, the "amiable Digby" of Pope, and in request at Magdalen College as a private tutor. The pretended citation which he made in the pulpit at St. Mary's from a Latin historian, proves his excellent Latinity, "*Nunquam magis periclitata est respublica Romana, quam cum nemo eam periclitari ausus sit asserere.*" A similar happy invention is ascribed to Cardinal De Retz, and does honour to his scholarship. We may infer, however, from a quotation often revived in derision, that the mathematical knowledge of the Oxford tutor was not equal to his classical, if indeed, he spoke as it is pretended, at an assize sermon at Derby, to the utter confusion of Euclid, of "parallel lines running together and at last meeting in one centre,"

<sup>f</sup> Drake's Essays on the Spectator.

the most poetical proposition in mathematics that was probably ever hazarded from the banks of the Isis.

Dubbed a D.D. at the early age of thirty-four, conscious of a fine person and graceful delivery, and emulous of a larger sphere, he obtained the lectureship of St. Saviour's, Southwark, and caught at distinction by the pert petulance of his discourse and extreme high church opinions. Of the rival clerical candidate he spoke as the "dullest soul that ever mounted timber,"<sup>g</sup> and inveighed against Drs. Tillotson and Stillingfleet as the poorest writers in the English language. The Bishop of Bristol he called a fanatic in lawn sleeves, because he had directed the Litany to be read, not chanted. King William, according to him, deserved to be *de-Witted*, for he made none but fanatics bishops, adding, "I could have pardoned that king all his villanies, if he had not left us the accursed legacy of the Hanoverian succession."<sup>h</sup> The orthodox divine placed the portrait of this schismatical Dutchman, together with that of Oliver Cromwell, in a sort of holy alliance, behind the door of his study.

An orator so given to railing and unscrupulous censure could not fail to meet with partisans in the city, where politics ran high; he was chosen by the Lord Mayor to preach the annual sermon at St. Paul's on the anniversary of the Gunpowder Plot. To the delight of many civic dignities, the pulpit pamphleteer applied to Lord Treasurer Godolphin the well known nick-name of Volponé, from the Fox of Ben Jonson, a play then frequently acted, and with the clever tricks of whose cozening usurer the audience were probably familiar. Whether published at the request of the Lord Mayor or not—the timid official

<sup>g</sup> Somers' Tracts.

<sup>h</sup> Bissett.

disclaimed his permission—the sermon was read as never sermon had been read before, and ministers injudiciously elevated the author to a more exalted stage than his own pulpit. King William shewed better sense, when his consent was asked before impeaching a divine. Having enquired the clergyman's character, he was told that he was the most hot, positive fellow in England; so extremely wilful, he would rejoice to be a martyr. "Is he so?" said the sagacious monarch, "then will I disappoint him."

But the sagacity of King William was not shared in this instance by the ministers of Queen Anne. "They had a parson to roast," says Bolingbroke, "and kindled so fierce a fire as to burn themselves." The long-protracted trial was one continued scene of mortification and annoyance to Godolphin, his prosecutor. He writes in March, 1709-10, "This uneasy trial does not only take up all my time, but very much impairs my health, and how it will end I am not at all certain, but I certainly wish it had never began, for it has occasioned a very great ferment, and given opportunity to a great many people to be impertinent!" and again, after a fortnight's sad experience, "This sorry trial makes the life of a galley-slave paradise in comparison with mine."

With Sacheverell, on the other hand, the protracted trial was one long festive triumph. Prayed for, even in the Royal Chapel, as a person under persecution—escorted to Westminster by enthusiastic friends—riding in the same chariot with the Vice-Chancellor of Oxford, through a chorus of huzzas—the idol of lovely women, who had his portrait painted on their fans and kerchiefs—the hero of the multitude—the champion of the church, whose



leading divines actively supported the clergyman, however much they might despise the man—fêted by the London citizens—presented with 3,000 guineas by one munificent devotee, Dr. Sacheverell found himself suddenly famous, a martyr without the pangs of martyrdom, a hero without heroism.

An exemplary punishment had indeed been contemplated for the scurrilous polemic. "Ministers," says Lockhart,<sup>1</sup> "designed nothing less than the pillory, and his being whipt at a cart from the Royal Exchange to Charing Cross; besides a severe fine, long imprisonment, and deprivation of his livings, with an incapacity of any preferment in the church for the future." The real sentence could scarcely be said to hurt his vanity; for he was still to be gazed at in the desk and on the platform, was still the mould of fashionable coteries, and drew his income at leisure. It became a popular fancy with people of distinction to invite the handsome confessor to christen their children, and to call them by his name. He made a circuit of the London churches to read prayers, and scarcely standing room could be found for the pious multitude who thronged to make their responses. He published a collection of prayers called Sacheverell's Thanksgiving, with an allusive text, to which he made a profane application, "My soul is escaped even as a bird from the snare of the fowler: the snare is broken, and I am delivered!"

As a royal progress had often been attempted with success to propitiate popularity, Dr. Sacheverell was advised to commence a triumphant tour through the country. On his route to take possession of a small living in Wales, he was received by the orthodox

<sup>1</sup> Lockhart's Memoirs.

counties of Oxford, Hereford, and Salop, and by the high tory Welshmen, with honours greater than were ever paid to priest since the days of Thomas à Beckett. Presents of wine, chaplets of flowers, thanks by mayors, speeches of recorders, the firing of cannon, ringing of bells, processions headed by 3,000 gentlemen on horseback, bonfires, and illuminations, attested the gratitude of the country to their clerical deliverer.

However unworthy the object whom these fervid rejoicings encircled, they proved, even when mistaken, the enthusiasm of the nation, and the sincerity of its attachment to the Church of England. It was a blind superstition which made, in this instance, like some idol of Egypt, a monkey their god. The loyal exultation elicited by his presence, influenced favourably for government the approaching elections. On the first public opportunity, soon after his suspension was ended, he preached before the grateful House of Commons, by their desire, at St. Margaret's, Westminster, and was thanked for his loyal effusion. Better than their 'empty praise' was 'the solid pudding' that followed—the rich rectory of St. Andrew's, Holborn, with which he was amply requited for past persecutions.

It is highly to the credit of good Queen Anne, a right-minded though not a strong-minded woman, that she would not yield to the Lord Keeper Harcourt's importunity the further gift of a bishopric to this busy ecclesiastic. However convenient a tool, he was held in no higher regard than as a useful instrument and no more, by the warmest partisans of the ministry. The personal dislike of Swift, founded on his thorough contempt for the doctor's talents and tenets, peeps forth in his journal: "Did I tell you,"

he writes to Stella, "that Sacheverell has desired mightily to come and see me; but I have put it off: he has heard that I have spoken to the secretary on behalf of a brother whom he maintains. Last night I desired the lord treasurer to do something for that brother of Sacheverell's, and he immediately put his name in the table book. I will let Sacheverell know this, that he may take his measures accordingly, but he shall be none of my acquaintances." With the same splenetic feeling, the scornful dean chuckled over the disappointment of a bookseller, who had printed 10,000 copies of the first sermon preached by the restored preacher, after the three years' silence, intituled, "The Christian Triumph, or the duty of praying for our enemies," on a text most improperly selected and applied, "Father, forgive them, for they know not what they do." Swift predicted truly, in his nervous vernacular language, that the fellow would be confoundedly bit. "I have been reading," he adds, "Sacheverell's long dull sermon, which he sent me. Not a word in it upon the occasion, except two or three remote hints." The contempt of Swift for the intermeddling churchman was fully shared by Lord Bolingbroke, who terms him "a vain, froward, turbulent preacher of tawdry declamation!"

The secret of his temporary inflation having escaped, he subsided for the remaining sixteen years of his life into comparative obscurity. On the accession of George I., he trooped with the London clergy to present loyal addresses, and preached on coronation day an appropriate sermon at Sutton near Birmingham, where 200 of the populace assembled at night to shout the old war-cry of "Down with the whigs, and Sacheverell for ever!" But the fire was burnt out.

It would have been difficult to foretell the extent of the conflagration, had Bishop Atterbury's daring offer of proclaiming the Pretender at Charing Cross been accepted. The prelate's inflexible zeal would have braved the ordeal; but we doubt whether Sacheverell would have acted up to his professions, and stood in that hour of instant peril by his side. True to his genius for railing, the doctor contented himself with inveighing against the procession of the Duke of Marlborough, who made a triumphant entry into London, as "an unparalleled insolence, a vile trampling upon royal ashes."<sup>k</sup> Harmless invectives like this the doctor would freely scatter from his pulpit, and brave the danger. We read no more of the divine except in some parish vestry brawls. Certain repairs being wanted for St. Andrew's, to the extent of £1500, an opposition was threatened, but the veteran tactician put the question of finance as a question of orthodoxy to the vote, "You that are for the church, hold up your hands: you that are against the church, hold up yours," and carried his point. For the effect of his vituperation Dr. Sacheverell could never be forgiven by the whigs. He died soon after the banishment of Atterbury, to whom, with a natural feeling of gratitude, he had left a legacy of £500, in 1724, "a scandal," says Oldmixon, "to his name, his function, and his country."

He had risen like a rocket, and fell as the stick. He had been used as a torch or firebrand, the means of sudden brilliancy, and, when the conflagration was over, men cast him aside with no more regard than a piece of blackened wood.

<sup>k</sup> Ellis Correspondence.



CHAPTER X.

---

THE principles which Sacheverell had proclaimed from the pulpit, and which his fruitless prosecution but partially denounced, were acted upon to their own discomfiture by several conscientious jacobites on the accession of George I. The rebellion of 1715 was soon put down, and the law proceeded to glean from the first rank of traitors what the sword had left. We find the solemn pomp of a trial before the peers in Westminster Hall again revived, and this time the sharp edge of the axe turned towards, and not away from, the unhappy state-prisoners.

The Earl of Derwentwater, and five other rebel lords were impeached, without the production of any document or vouchers, on the notoriety of the fact that they had been taken in arms, and severally pleaded guilty. George, Earl of Wintoun, alone, a peer of weak intellect, had the cunning to plead not guilty, and, on the pretext of absence of witnesses, to gain a respite of two months for his trial. Several portions of this trial are full of interest, from the strong light which they throw on the hardships to which the accused were still subject, from their not being permitted a full defence by counsel. The mental imbecility

of the prisoner, relieved by occasional flashes of spirit and feeling, and the eloquent courtesy of the high steward, Lord Cowper, cannot fail to enlist our sympathy. In their elaborate impeachment, the Commons trace the rebellion to the arbitrary principles inculcated in the last reign, when the holy scriptures were wrested, and the most wholesome doctrines of the Church of England perverted and abused by men in holy orders, in the most public and scandalous manner, to condemn the justice of the late happy Revolution. The fruit of this conspiracy was reaped in civil war, notwithstanding, as the charge asserted, with a licence somewhat poetical, “it had pleased Almighty God, in his infinite wisdom, to call to himself the late Queen Anne, and, by a concurrence of many most wonderful providences, to give a quiet and peaceable accession to his present most gracious majesty to the throne of his ancestors, to which he was received with one full voice and consent of tongue and heart.”

As Lord Wintoun had been taken in open war, had marched into England with the rebels, and proclaimed the Pretender, he could not deny the facts charged, but traversed the treasonable intent, alleging that he had acted under compulsion. “He was descended from a very ancient noble family, in whose blood the streams of loyalty were always pure, never corrupted or polluted with treason or sedition. He had confined himself to his house, Seaton Palace, where he was not permitted to remain in quiet, but had his dwelling rifled by the Lothian militia. The most sacred places did not escape their fury and resentment; they broke into his chapel, defaced the monuments of his ancestors, took up the stones of their

sepulchres, thrust irons through their bodies, and treated them in a most barbarous, inhuman, and unchristian-like manner; cannon and mortars were brought to demolish his house. By these and many other severities he, the Earl of Wintoun was forced to leave his house and seek for shelter among his tenants and neighbours, where he was pursued from house to house, and at last very unfortunately driven into the company of some of the gentlemen named in the impeachment. He presumes to affirm to your lordships, that he did not join them with a traitorous or rebellious design, but only with an intention to preserve himself from being insulted and assassinated."

Sir Thomas Powis, having declined, with a pusillanimity not common at the bar, the invidious task of defending him, two counsel of equal eminence, Sir Constantine Phipps and Mr. Peere Williams were assigned to Lord Wintoun; but he was thus clearly informed by the High Steward how little benefit the inhumanity of the law permitted a prisoner to derive from their formal assistance:—"The counsel assigned you are not to cross-examine any witnesses, nor to give you any assistance, public or private, while matter of fact only is in question; but, if any matter of law arise during the course of your trial, they may speak to it in your lordship's behalf, and to that end they are permitted to be within hearing, that they may be the more ready and able to serve your lordship on such an occasion." The first witness having proved that the prisoner had led a troop to the rebel camp, and voluntarily marched with them as far as Preston; he was asked if he would put any question, when the following curious dialogue, showing his utter helplessness, if not assumed for the occasion, ensued:—

*Lord High Steward.* My lord, if you have any question to ask, propose it, and it shall be asked.

*Lord Wintoun.* I cannot examine him ; I desire my counsel may examine him.

*Lord High Steward.* I told your lordship your counsel are not to assist your lordship in cross-examining the witnesses ; you have a liberty of cross-examining them yourself, by proposing your questions, and they will be asked by the Court.

*Lord Wintoun.* I never examined a witness in my life. I desire my counsel may do it for me.

*Lord High Steward.* Have you any questions ?

*Lord Wintoun.* My lord, I hope you will allow my counsel to speak for me.

*Lord High Steward.* Have you any question you desire to be asked, and it shall be asked ?

*Lord Wintoun.* I desire my counsel may ask for me ; it is very hard to have none to speak for me, and there are twenty against me.

Proclamation for silence as usual.

*Lord High Steward.* My Lord Wintoun, I hope now you will be better heard. If you have any question to ask this witness, if your lordship propounds it, it shall be asked him.

*Lord Wintoun.* My lord, allow my counsel to speak for me ; I have but two.

*Lord High Steward.* My lord, I have acquainted you (but apprehend you did not hear me), that the law of the land doth not allow it.

The same form was gone through (a practical satire on the state of the law) at the close of the next evidence.

*Lord High Steward.* My Lord Wintoun, will you ask this witness any question ?



*Lord Wintoun.* My lords, I be not prepared, so I hope your Lordships will do me justice: I was not prepared for my trial. I did not think it would come on so soon, my material witnesses not being come up; and, therefore, I hope you will do me justice, and not make use of *Cowper-law*, as we used to say in our country, hang a man first, and then judge him." After indulging in this clever gibe at the expense of the courteous President, he was called upon for his defence, when the poor lord prayed that he might be allowed further time. "Please to allow me some time, for my witnesses are not yet come. I have used all possible endeavours to get them; please to allow me till this day month, until they come up. It will signify nothing to examine any witnesses after I am dead. I never saw my counsel but once, that they might instruct me what I have to say. My lords, I am informed they will be here some time next week."

His petition for delay was reasonably enough refused, for he had been already allowed five weeks to bring up witnesses from Scotland. He then prayed that his counsel might speak for him, but was told that could not be, as the law supposes every man sufficient to answer for himself as to matter of fact, one of the worst fictions that even our criminal law was ever guilty of inventing. When further pressed to enter upon his defence, the prisoner declared his utter inability. "I do not really know, my lords, what to say for it, for I do not understand the proceedings of this House. It was always the custom in any court where I was, for people to be allowed to speak, or the counsel be allowed to speak for me, for I am not accustomed to speak any manner of way in my own

defence : therefore I hope you will allow my counsel to speak for me."

When this had been again and again pronounced impossible, the accused at length stammered forth that his counsel had a point of law to urge, and when asked to explain what it was, said, more sensibly than his judges could have answered, "I do not understand law, and how should I introduce a point of law?" Unable to state facts, unable to argue law, he was condemned unheard ; his lawyers being compelled to stand as mutes at his side. His guilt was clear, and, perhaps, this deplorable deficiency produced more compassion than the most eloquent defence could have done.

But other cases of doubtful guilt might arise, where the accused would be equally trammelled, equally helpless, and a sense of the law's injustice began to prevail. A full defence by counsel was in a few years permitted to prisoners accused of high treason ; but not till nearly a century later were the advocates of felons, trembling for their liberty, often, sadly, shamefully too often for life, allowed to speak in their behalf.

When brought up the next day for judgment, and asked the formal question if he had anything to offer why judgment of death should not pass upon him according to law, the clerk reported from Lord Wintoun, for his voice was too weak to make himself heard, "My Lord Wintoun saith his counsel have a point of law to offer to your lordships, to shew that he is such a person against whom by law judgment ought not to be given."

*Lord High Steward.* My lord, will your lordship state the point upon which your lordship is advised

that you are not such a person against whom judgment ought to be given.

*Clerk, from Lord Wintoun.* I do not know what your lordship means.

Flesh and blood could not stand this any longer. Sir Constantine Phipps, though he knew as a lawyer that he was infringing the rule, felt as a man, and burst forth, "If your lordships please, we have a point of law humbly to offer to your lordships, if—" He was not permitted to proceed farther, for the managers of the Commons interfered here in a transport of holy horror.

*Attorney-General.* My lords, I hear a gentleman of the long robe offering to speak. I do humbly insist on it that they are not to speak, unless there be a point of law stated by the prisoner, and which your lordships shall think to be a point of law: we think it irregular.

*Mr. Cowper.* We apprehend the objection to that gentleman's being heard is so obvious, that we are surprised to find he should presume to speak without your lordships' direction so to do. He cannot but know that the prisoner is to propound the question in law, and if your lordships shall conceive it to be a point of law proper to be argued by counsel, your lordships will direct him to speak; but he ought not in any case to propound a question in law; nor, when a question is propounded by the prisoner, to speak to it without your lordships' express direction.

*Lord High Steward.* Sir Constantine Phipps, you know the practice to be so, and the point must be first stated by the prisoner, before you can speak to it.

*Sir C. Phipps.* My lords, if I had been heard but ten words more—

*Sir W. Thompson.* My lords, we humbly insist upon it that that gentleman be not heard one word more.

The lords then adjourned to consider what punishment the humane counsel ought to suffer for his daring; and, during their absence, the prisoner was at length prompted what to say. On their return, the High Steward delivered the judgment of his brother peers on the matter of fact, that Lord Wintoun was such a person as against whom judgment ought to be given. "I am likewise ordered by the lords to reprimand you, Sir Constantine Phipps, for having, in a proceeding of this nature, presumed to be so forward as to speak for the prisoner at the bar before a point of law was first stated, and you had leave to speak to it; and your fault is certainly the greater for having presumed to do this to a matter which you cannot know is matter of fact, and that the law is not doubtful one way or other, the fact being supposed. My Lord Wintoun, I am allowed again to ask your lordship if you have anything further to allege, or move, why judgment of death should not pass upon you, according to the law.

*Clerk, from Lord Wintoun.* My counsel are ready to offer, in arrest of judgment, that the impeachment is insufficient, for the time of committing the treason is not therein laid with sufficient certainty.

The counsel, having obtained leave to argue this point, proceeded to urge, with much ability, that the impeachment was defective for uncertainty, the treasons being charged to have been committed in or about the months of September, October, or November, 1715, and not on any day certain: that the day must be laid in the indictment, though the same day need



not be proved, and that an impeachment, by which a peer was to be attainted, ought to be as certain as an indictment.

Mr. Peere Williams, venturing to make a slight allusion at the close of his argument to the unhappy state of his client, was at once admonished of his rashness by the over-scrupulous Commons—"My lords, I have nothing else to say on behalf of this unhappy lord; unhappy, as being in that doubtful state of memory, not insane enough to be within the protection of the law, nor at the same time sane enough to do himself, in any respect, the least service whatever." (Here the managers gave some interruption to the counsel.)

*Lord High Steward*—"Mr. Williams, I apprehend, the reason why the managers of the House of Commons appear uneasy with you is, that you are going into a matter of fact, and which you have not leave to speak to; you must, therefore, confine yourself to the point of law that was stated." The objection was overruled, there being precedents to prove that the time was laid with sufficient certainty in an impeachment. The prisoner, when asked if he had anything more to offer, replied with melancholy truth: "Since your lordship will not allow my counsel, I don't know nothing."

The Lord High Steward then proceeded to pronounce judgment, with an eloquence and pathos that would have become the most classical periods of oratory, as the following paragraphs will evince:—"My lord, this your crime is the greatest known to the law of this kingdom, or of any other country whatsoever. And it is of the blackest and most odious species of that crime; a conspiracy and attempt, mani-

fested by an open rebellion, to depose, and murder, that sacred person, who sustains, and is, the majesty of the whole, and from whom, as from a fountain of warmth and glory, are dispersed all the honours, all the dignities, of the state ; indeed, the lasting and operative life and vigour of the laws, which plainly subsist by a due administration of the executive power.

“Alas ! my lord, your crime of high treason is made yet redder by shedding a great deal of the best blood in the kingdom. I include in this expression the brave common soldiers as well as those gallant and heroic officers, who continued faithful to death in defence of the laws ; for, sure, but little blood can be better than that which is shed while it is warm in the cause of the true religion and the liberties of its native country.”

The Lord High Steward concluded his pathetic appeal with pronouncing the penalties of death, and enumerating those horrid mutilations, then a part of the sentence of high treason, which as little became the lips of Cowper, though he could not refuse to utter them, as they were unsuited to the character of a civilized and humane people. The Earl of Wintoun was remanded to the Tower, and there, during the interval between his sentence and period of execution, made good use of the mechanical skill which he had acquired when working as a blacksmith and bellows-mender in France,<sup>a</sup> by sawing through, with considerable ingenuity, the iron bars of his prison windows, and doing, as George I. well remarked, the wisest thing that a man could do in his situation. He effected his escape to France on the 4th of August, 1716, and ended his chequered life at Rome, at the mature age of

<sup>a</sup> Scott's Tales of a Grandfather.

seventy, in 1749. The long and illustrious line of Seton ended with this half-witted peer, an inspired idiot, unless, indeed, as his adventures strongly incline us to suspect, the charge of imbecility was a popular exaggeration. "The Earl," says Patten, in his History of the Rebellion, "was always forward for action, but never for the march into England. His advice, if followed, would have tended to their advantage. All his actions, both before being made prisoner and till he made his escape, speak him to be master of more penetration than many whose characters suffer no blemish as to their understanding." He seems to have suffered under a bad name, not unlike that sagacious animal the ass, which is always the first to open the field gate, and yet held stupid to a proverb.

We turn from the fate of the ill-used earl, from the reputed "Wamba the son of Witless," to the fortunes of a brother earl, to whose wisdom the world did more justice, still more wary in his attempt at escape from impeachment, and of admitted shrewdness, the Earl of Oxford. He had been committed to the Tower before the outbreak of the civil war, but lay still, waiting for the storm to blow over. For another year after the trial of the condemned traitors, he still lurked, content with safety, in forgotten imprisonment, and, only at the fitting season, the treasury bench being thinned by desertions, and the nation calm; at the very moment when he could strike with impunity, presented his petition for a speedy trial, and recalled to his oblivious judges the articles of impeachment, under which he had been sequestered two long years in prison. They were read with very different feelings from that intense and glowing indignation which accompanied with murmurs their first recital,

but still presented a formidable bead-roll of crimination.

After a long and pompous preamble, setting forth, in effect, that to prevent the monarchy of Spain from coming into the hands of the house of Bourbon, had been the principle and maxim by which alone the balance of power in Europe could be preserved, for which treaties had been made, wars enterprised, victories gained, the fruits of which ought to have been a speedy, just, honourable, and lasting peace; the articles of impeachment charged Lord Oxford with making clandestine offers of peace to France, contrary to engagements with our allies. Secondly, that he negotiated a private and separate treaty with France, admitting the Duke of Anjou to be King of Spain. Thirdly, he was accused of sending false instructions to Stafford to deceive the States-General. Fourthly, He gave a false assurance in the name of the queen, that she had made no separate treaty with France. Fifthly, He treacherously negotiated with the ministers of France that Spain and the West Indies should remain in a branch of the House of Bourbon. Sixthly, Assuming to himself regal power, he advised a private and separate negotiation of peace with France, directly from England to France, without any communication to the allies. Seventhly, He advised a renunciation of his right to the throne of France by the Duke of Anjou, though he well knew the renunciation would be null by the fundamental laws of France. Eighthly, Aware that the allied armies were in excellent condition, by battle or siege, to gain great advantages over the enemy, he advised an order to the Duke of Ormond, that he should avoid engaging in any siege, or hazarding a battle, till



further instructions, though nothing had been settled by private negotiation, and the King of Spain had not renounced his title to the crown of France, whereby a most favourable opportunity for conquering the enemy was lost, all hopes of confidence between her majesty and her allies entirely destroyed, and the French king made absolute master of the negotiations of peace. Ninthly, He was consenting to a separate concert with the ministers of France for separating the troops in her majesty's pay from the rest of the confederate army, causing the loss of important fortresses, and changing the fortune of the war. In violation of his oath, the ex-treasurer had refused to pay the subsidies due to the foreign troops by act of parliament. Tenthly, He made a separate treaty of suspension between Spain and France, cutting asunder the ties of union between her majesty and her allies.

These charges involved only a grave state misdemeanour; but capital accusations followed. The eleventh article contained a charge of high treason:—"That the Earl of Oxford traitorously advised the French enemy in what manner, and by what method, the important fortress of Tournay, then in the possession of the States-General, might be gained from them to the French king, contrary to the duty of his allegiance." The twelfth article also contained a charge of treason, that he traitorously advised the Duke of Anjou, with whom his majesty was at war, and promoted the yielding up Spain and the West Indies, or some part thereof, to him.

The thirteenth article prefaced that the riches, power, and strength of these kingdoms depend entirely on the flourishing condition of trade and navigation; and that the nation ought to have found their interest

in trade and commerce, according to the queen's promise, improved and enlarged by the peace; but that Lord Oxford agreed that the subjects of France should have liberty of fishing and drying fish in Newfoundland, and ceded the fishery of Cape Breton to France, yielding up that beneficial branch of trade, always esteemed the great support of the naval power and the chief nursery of the seamen of Great Britain, sacrificing our commerce to France, and not procuring the least shadow of advantage in trade.

By Article 14, he was charged with having agreed to dispose of the kingdom of Sicily to the Duke of Savoy, and employed a part of the fleet against our own ally, the Emperor of Austria.

The fifteenth alleged that the dignity and support of the imperial crown of these realms has, in all ages, depended on the wisdom and truth of the communications made from the throne, especially in parliament, as the sure and only means whereby the kings and queens of this realm can receive the sincere and faithful advice of their people in matters of the highest importance, and by which the fundamental laws and constitution of this government ought to be inviolably observed, as the sacred bond of the duty and affection of subjects to their sovereign. "And whereas, by the most ancient and known laws of this kingdom, it is indispensably incumbent on the great officers of state that surround the throne to maintain, as far as in them lies, the sacredness of the royal word on all occasions;" that, by means of his false counsels, her majesty declared from the throne that, "notwithstanding the arts of those who delight in war, both place and time are appointed for opening the treaty of a general peace. Our allies, especially the States-General,

whose interest I look upon as inseparable from my own, have, by their ready concurrence, expressed their confidence in me :” whereas it was then notorious to all Europe, and the said Robert Earl of Oxford and Earl Mortimer and others his accomplices well knew, that the principal allies of her majesty, and particularly the States-General, then had, in the strongest and most pressing manner, represented, not only to her majesty’s ministers in Holland, but afterwards, by a minister of their own, directly to her majesty, the insecurity and danger to the common cause, by entering into general negotiations with France on the propositions signed by Monsieur Mesnager ; and also their firm opinion of the fatal consequences that might ensue thereon. The earl had also advised her majesty to declare in a message, “that the world would now see how groundless those reports are, which have been spread abroad by men of evil intentions, to serve the worst designs ; as if a separate peace had been treated, for which there has not been the least colour given :” whereas a private and separate negotiation had been carried on for five months together, between Great Britain and France ; and, during that time, private propositions had been sent from England, and a private treaty with a minister of France signed, even by her majesty’s privity, exclusive of all the allies, before the said declaration “made by her majesty.” By means of which treacherous counsels, Lord Oxford did most basely abuse the favour of his royal mistress, and, by means of her authority, did mislead her parliament into groundless and fatal resolutions.

The sixteenth article charged him with being wickedly determined, as far as in him lay, at one fatal blow,

to destroy the freedom and independency of the House of Lords, the great ornament and nearest support of the Crown ; that, to prevent the earnest representations of the allies, and any good effects from the advice of the House of Lords, he did advise her majesty to make and create twelve peers of the realm, whereby the Earl of Oxford did most highly abuse the influence he then had with her majesty, and prevailed on her to exercise, in the most unprecedented and dangerous manner, that valuable and undoubted prerogative, which the wisdom of the laws and constitution of this kingdom have entrusted with the Crown for the rewarding signal virtue and distinguished merit ; by which desperate advice he did not only, as far as in him lay, deprive her majesty of the continuance of those seasonable and wholesome counsels in that critical juncture, but wickedly perverted the true and only end of that great and useful prerogative, to the dishonour of the Crown and irreparable mischief to the constitution of parliaments.

When the articles, laden with these heavy charges, were read in the House of Lords, the late high treasurer made a short but effective reply, worded with so much grace and neatness, as to provoke a suspicion that signal injustice must have been done to his oratory in the bald reports of the parliamentary debates. The latter part of his address forms as good a specimen of simple and pathetic eloquence as any which that age has left us. “For my own part, as I always acted by the immediate directions and commands of the late queen, and never offended against any known law, I am justified in my own conscience, and unconcerned for the life of an insignificant old man. But I cannot, without the highest ingratitude, be uncon-



cerned for the best of queens, a queen who heaped upon me honours and preferments, though I never asked for them ; and, therefore, I think myself under an obligation to vindicate her memory and the measures she pursued, to my dying breath. My lords, if ministers of state, acting by the immediate commands of their sovereign, are afterwards to be made accountable for their proceedings, it may, one day or other, be the case of all the members of this august assembly. I do not doubt, therefore, that out of regard to yourselves, your lordships will give me an equitable hearing ; and I hope that, in the prosecution of this inquiry, it will appear that I have merited not only the indulgence but likewise the favour of the government. My lords, I am now to take my leave of your lordships and of this honourable House, perhaps for ever ! I shall lay down my life with pleasure in a cause favoured by my late dear royal mistress : and, when I consider that I am to be judged by the justice, honour, and virtue of my peers, I shall acquiesce and retire with great content ; and, my lords, God's will be done !”

He was then committed to the Tower, where, according to a precedent too common in the case of impeached ministers, he languished unregarded for a period of two years. As if to shew their sense of the insufficiency of the preceding charges to sweep a conviction into their drag-net, or to manifest their malice, the Commons added six supplementary articles, frivolous in comparison with the preceding grave accusations, and unfounded, charging the unfortunate earl with connivance at a fraud of £20,000, under pretence of sending arms to Canada ; with embezzling £13,000 to his own use ; with signing warrants for the payment

of £12,000 *to a creature of his, Matthew Prior* (such was the parliamentary mode of noticing that classical poet), exceeding the allowance even of an ambassador ; with paying sums of money to an Abbot Gaultier, for the use of the consort of the late King James II. ; with introducing to the queen an Irish Papist, Patrick Lawless, disguised as a Spanish envoy, under the name of Don Carlo Moro ; and, as the last item of this pitiful appendix, with having betrayed the distressed Catalans into irrevocable slavery.

The answers of the impeached earl are drawn up with considerable skill, in parts refuting the objections to his course of policy, and, where he cannot refute, artfully evading the consequence, or impairing its effect. It was impossible to prove that good faith had been observed with the allies, during the mysterious and long-protracted negotiations ; but he explained away the charge of attempting a separate peace, by showing the conduct of the States themselves ; that it was usual for those to whom the first overtures of peace were made to write down demands for themselves in the first place, and that our original proposals were preparatory to a general congress. There was no separate treaty, but hypothetical conditions only, to take effect in the event of a general peace. The preliminaries were communicated to the States, with no intention of amusing or deceiving them, but to procure their concurrence in a peace. The articles signed by Mr. St. John were not a separate treaty, and the declaration that no such treaty had been made was not false or deceitful. His instructions, as to Spain and the Indies, were defeated by the change of plans in King Philip ; and no person who acts in the service of the Crown can be safe, if it may

be charged on him as a crime that he advised instructions which, by intervening circumstances, afterwards became improper. As to negotiating directly with France, the queen was not debarred by the constitution of the kingdom or any known law from doing so. Though Lord Oxford did not advise leaving Spain and the West Indies to the present possessor, and accepting the renunciation, he sees no reason why this advice should not have been given, rather than continue a burdensome war.

The eighth article, founded on the secret and disgraceful instructions sent to the Duke of Ormond, pressed most heavily on the accused, and could only be met by a poor equivocation, a paltry false pretence : —“Though the divine assistance had been very remarkable in the many victories her majesty’s forces had obtained, yet her majesty’s piety was so great that it is not likely she should, without the greatest necessity, have been willing to have tempted that Providence, which had been so signal in her favour, by hazarding the blood of her subjects at a time when she had so near a prospect of the conclusion of a peace ; and the earl believes it might be owing to this piety of the queen and her knowledge of some important matters then depending, that directions were sent to the Duke of Ormond (if any such were sent) to avoid engaging in any siege, or hazarding any battle, till further orders ; which he supposeth her majesty might do upon any causes she thought proper, as well as the deputies of the States.” With regard to the separation of the forces, laid gratuitously to his charge, the generals of the allies separated themselves from the Duke of Ormond, and the generals of the auxiliary troops paid by her majesty refused to obey his orders ;

from her majesty's resentment at which act of disobedience, she might not think fit immediately to pay their arrears. The treasurer could not issue out moneys without a warrant from her majesty. The suspension of arms for four months, concluded by Lord Bolingbroke, was the continuation of a former agreement for a suspension of arms, which had been not only communicated to the allies, but into which they had been invited.

To the charges of high treason Lord Oxford opposed, for he saw their futility, a bold and steady front:—"So far from consenting to the surrender of Tournay, her majesty interposed on behalf of the States General, and prevailed that the fortress should continue a part of their barrier. Whatever advice Lord Oxford gave as to Tournay, he gave in his character of privy councillor, and he doth insist that for any privy councillor and minister of state, during the negotiations of peace, to advise or negotiate concerning the yielding, or giving up any town, province, or dominion, upon conclusion of the peace, as part of the terms and conditions of such peace, is not high treason by any law of this realm; and that such construction might hereafter deprive the Crown of the advice and assistance of several members of the privy council in matters of the greatest importance, by deterring them from giving such advice as, by their oaths and the duty of their place, they are obliged to do; would overthrow all means of restoring amity between princes, and render the law, in case of high treason, uncertain, which, by reason of its being the most penal, ought to be the most plain; and would be highly dangerous, and destructive to the lives and liberties of the subject."

As to the treason attributed to him in the twelfth



article, he denied aiding, helping, assisting, or adhering to the Duke of Anjou, but insisted that, in the whole of the negotiation, he had acted as a privy councillor and minister of state. The earl's rejoinder to the injuries inflicted on trade was most triumphant:—"So far from injuring, he had advanced the commerce of Great Britain by the Assiento contract and the liberty of trading to the Spanish West Indies; by the cession of Acadia, the bay and straits of Hudson, the island of St. Christopher, Newfoundland, the island of St. Peter, with other adjacent islands; by the demolition of Dunkirk, and the cession of Port Mahon and Gibraltar." The rights of the French to Newfoundland had been acknowledged in two treaties. The earl had not advised the cession of Cape Breton to France, but, if he had, did not know that Cape Breton was part of the territories of the crown of Great Britain:—"And as the earl disowns the being concerned in any violation of treaties, or in carrying on the measures of France, or in any negotiation which could terminate in the sacrifice of the commerce of Great Britain to France; so he observes, with great satisfaction, the flourishing condition of the trade and navigation of these kingdoms since the conclusion and by means of the late peace, in the great increase of the number and tonnage of shipping, of the exportation of the woollen manufactures, the fish, and other produce of this kingdom, in consequence whereof the customs have been greatly advanced—near three millions of gold and silver hath been coined—and the exchange has been all along in the favour of England to and from all parts of Europe. If her majesty had employed any part of her fleet to assist her good and faithful ally the Duke of Savoy,

the Earl of Oxford is not able to discover why that assistance might not be given to the Duke, as well as to any other of the allies."

The next charge of meanly equivocating in speeches from the throne could scarcely be disputed, but might be softened by sophistical and refined distinctions :— "Her majesty was not aware of the groundless jealousies which the States entertained, and, therefore, when she mentioned to Parliament their ready concurrence, spoke with the strictest truth, and the earl doth not observe how her majesty can be charged with uttering any falsity in her message of the 17th day of January, wherein she takes notice how groundless the reports were that had been spread of a separate peace being treated, for which report there was not then, nor at any other time, the least foundation ; since only some few points were adjusted relating to the particular interests of her own kingdoms, and even those were to have no effect but upon the conclusion of a general peace, and were, likewise, before such conclusion, communicated to the allies." However specious this explanation, it will not acquit the premier of inserting deceitful, if not unfounded, statements in those state documents which ought to be above suspicion.

"The creation of peers was an act of mere grace and favour, flowing entirely from the beneficent and gracious disposition of the sovereign in the exercise of her indisputable prerogative ; it is the undoubted right and prerogative of the sovereign, who is the fountain of honour, to create peers of this realm, as well in time of parliament, as when there is no parliament sitting or in being." The earl added that "if her late sacred majesty had acquainted him with her gracious intentions [pray Heaven pardon his hy-

pocrisy !] he does believe he should have highly approved her majesty's choice ; and doth not apprehend that in so doing he had been guilty of any breach of his duty, or violation of the trust in him reposed ; since they were all persons of honour and distinguished merit, and the peerage thereby was not greatly increased, considering some of those created would have been peers by descent, and that many titles of honour were then lately extinct. And the earl believes many instances may be given, where this prerogative hath been exercised by former princes of this realm in as extensive a manner, and particularly in the reigns of King Henry VIII., King James I., and his late majesty King William."

The once royal favourite omitted to state whether there was any precedent of so many peers created for a special purpose in one day !

The supplementary articles were quickly disposed of:—He had discouraged the Canadian expedition, as what, in his own judgment, he was diffident of. He had suspicions of the appropriation of the money, but could not find sufficient grounds for laying his suspicions before Parliament. The earl artfully deprecates the use so disingenuously made in this charge of his private memorial :—"He humbly hopes he may be allowed to observe, that it would be a matter of particular hardship, and what seems to him inconsistent with the rules of government, and without precedent, if the most secret and intimate papers and letters wrote to that most renowned and pious princess, her late majesty, by her own special command, and for her own private perusal, should be imputed to any as a crime. The sum of £13,000 was a present to him from her majesty after his wound, deferred at his own

request. He produced the royal warrant as a voucher for his statement, and reminded the House that grants much larger have been made from the Crown to other ministers of state, while the necessities of the Crown were equally pressing." In further vindication of his character from the insinuations of avarice and corruption, he added, what even his enemies knew to be true—"that in every employment to which he was called by her majesty's favour, he was always contented with the accustomed incomes and profits of the said employments, without endeavouring to increase his gain by unwarrantable or extraordinary perquisites; that, whilst he was in any office of trust about her majesty, he never abused that trust in making any manner of profit or advantage to himself, either by the disposal of places in his own gift, or by the recommendation of persons to her majesty for such as were granted immediately by herself; that, neither in nor out of place, did he ever receive any pension from the Crown: that, as he came with clean hands into her majesty's service, so he went not only with clean but almost with empty hands out of it, having spent therein most part of the profits which accrued to him from the places he enjoyed; so that at this time, notwithstanding all the advantages he received from them, and the extraordinary bounty of the queen to him in this article mentioned, he can with great truth affirm that his private fortune hath received very inconsiderable addition thereby."

The money paid to Prior, no creature of his, was on a less scale than the usual allowance to plenipoten-tiaries, £1500 for equipage, £100 a-week for ordinary expenses, and £1600 for extraordinaries, and further sums for services performed by special order. The



treasurer had paid the arrears of her dower to Queen Mary D'Este, according to the royal warrant; and, on the same authority, had given to Monsieur Gaultier £1000, a reward for obtaining the release of poor protestants, suffering in the galleys for their religion. As to the reception of Don Carlo Moro, the sovereign is the proper judge whom to receive or refuse, as a public minister. The lord who introduced Lawless did not know that he was other than a native of Spain. The Catalans had suffered cruel extremities for their refusal to submit to the King of Spain, upon the terms his majesty had stipulated for them. With the consequences of that refusal the earl could not in justice be charged.

After apologizing for any defects in his answer which might arise from the weakness of body and ill state of health, under which he had been for some months labouring, the accused earl added a very just caution, "that most of the articles related entirely to the negotiations of peace lately concluded at Utrecht; that, in treaties between enemies, such terms are often proposed, and such arguments used, as carry a different appearance from the real intentions of those that treat; upon which accounts it must be very difficult to set everything that passed in the late negotiations with regard to the enemy and to the allies in a clear light, and to justify every step that was taken towards conducting them to the end proposed." This difficulty was enhanced by the House of Commons having refused him access to all letters and papers. The terms of the peace, he reminded their lordships, were communicated to the Parliament, and with their concurrence agreed on; that the peace thus concluded was afterwards highly approved by both Houses; that

solemn thanks were rendered to God for it in all our churches, as well as in the churches of the United Provinces; and that her majesty received, on this subject, the hearty and unfeigned congratulations of her people from all parts of her dominions. "And if the peace itself be not condemned, and if it be not even charged upon the said earl as a crime, that he advised her majesty to conclude that peace (neither of which appear to him from the articles) he humbly conceives it is a particular and extraordinary hardship upon him, that rough draughts and essays towards a peace, with other preliminary steps in a negotiation, all leading to an end which he looks upon to be just and profitable, and which is not in any of the articles alleged to be otherwise, should be brought into so many distinct heads of accusation against him."

The Commons contented themselves with a short rejoinder, couched in strong terms of contumely and scorn, to these well-reasoned replies. Adopting the tone of Walpole, who said that the whole might be abridged into two lines, that the late queen did every thing, that she was a wise and pious princess, they declared their opinion that, "if it were possible to add to the heavy load of guilt, in which the treasons and other most flagitious crimes had already involved the Earl of Oxford, this base and ungrateful attempt to impute them to his royal mistress must bring such a new weight of infamy upon him, and so justly provoke the indignation of the Commons, that they might think themselves obliged to demand your Lordships' immediate justice for this unwarranted attempt upon the honour of the late queen and the proceedings of Parliament."

That no time might be lost in satiating their ven-

geance, it was ordered that the committee appointed to draw up articles of impeachment, and to prepare evidence against the impeached lords, be empowered to sit, notwithstanding any adjournment. But this fever heat soon sunk into a lukewarm feeling, a tepid degree of satisfaction at the positive suffering already inflicted. Oxford lay in the Tower, Bolingbroke and Ormond were attainted exiles, with their titles razed from the book of nobility ; inferior party agents, Prior, and Harley, lingered in prison ; their own friends were basking in the full sunshine of place and profit and power. The controlling motive for ulterior proceedings had thus died away, and nearly two years passed without any public recognition of the late lord treasurer's existence. It was not till even his excessive caution saw the way clear for escape, by the disunion of his enemies, Walpole and Townshend having strayed into active opposition, that, on the 22nd May, 1717, he preferred a petition to the House of Lords to take the circumstances of his case into consideration, stating the remarkable fact, that he had remained a prisoner since the 9th of July, 1715, and expressing his assurance that their lordships would determine according to the rules of justice and course of parliament, and that it was not their intention that his confinement should be indefinite. Thus awakened to a remembrance of the defunct prime minister, the House began to doubt whether he ought to be a prisoner at all ; and raised that difficult question—for the affirmation of which, half a century later, all the lawyers against all the statesmen in the House contended—whether his impeachment had not been determined by the intervening prorogation. It was maintained by forty-five peers against eighty-seven,

that the law and practice of parliament, in all ages, made no difference between a prorogation and a dissolution, in determining both judicial and legislative proceedings ; but the weight of reasoning, as well as numbers, appears to have negatived their proposition.

As the peers had, however, an uncontested right to appoint the day of trial, and as it concerned their order to put a speedy end to this lingering prosecution, they fixed the 13th of June, but afterwards postponed the day, at the Commons' request, till the 24th. The Commons were totally unprepared with managers or evidence. The late chairman of the secret committee, Mr. Walpole, took too active a part in opposition to lend ministers the slightest aid : other zealous members, Sir Richard Onslow, and Lord Coningsby, had been translated to the House of Peers. Distance of time and success had brought in their train the natural consequences, increased calmness and moderation, and the belief in secret treason had diminished with the sense of security. Lechmere alone, with characteristic impetuosity, would pledge his life upon the prosecution ; but few seconded his ardour, and, upon a motion for further postponement, there was, for two or three minutes, a silence in the House, the members looking one upon another, waiting who should speak first. From this deadness and langour in preparing for trial, its probable close might be readily foreseen. For the defence, the earl sought but safety, his accusers only wanted an honourable retreat.

The trial commenced in Westminster Hall, with all the dread pomp and circumstance peculiar to that august ceremonial, the impeachment of a peer for treason. With refined courtesy, Lord Cowper, who



acted as high steward, abstained from the usual exhortation and advice to his quondam colleague. "Considering the many great offices your lordship has borne in the state, your long experience and known learning in all parliamentary proceedings, I cannot but think it would seem improper for me to be speaking to your lordship in that manner." Mr. Hampden opened the proceedings, in a speech the mere cento of the charge; and Sir Joseph Jekyll, 'faithful among the faithless,' stood up to enforce the first article, when Lord Harcourt moved an adjournment. By a majority of eighty-eight against fifty-six, the Lords acceded to his suggestion, 'That the Commons be not permitted to proceed to make good the articles for high crimes and misdemeanors, till judgment be first given upon the articles for high treason.' We are sceptical in our belief, that this was a mere party device to save the honour of the Duke of Marlborough, whose traitorous letter to the Pretender, Lord Oxford had in his possession.

The reasons for the decisions of the peers were weighty, and founded in substantial justice. The proceedings on an impeachment of a peer for high treason differed, in some essential respects, from those, where the charge rested merely on alleged high crimes and misdemeanors. In the first alone ought a peer to be sequestered by Parliament, and committed to the Tower, and stand at the bar during his trial. By blending the crimes together in order of time, and not according to their degree, a precedent might be introduced of dangerous consequence to the peerage. In point of convenience, as the two articles for high treason involved loss of life and estate, further inquiry would seem to be superfluous, were there good ground

for this accusation. The Lords might, therefore, avail themselves with reason of the right, inherent in every court of justice, to direct the course of proceeding, and order which charge should be entered upon first. These arguments seem to carry greater weight than those urged by the Commons at the conference, that the facts were laid together in order of time; and that, in laying open the course of such a wicked administration, the preceding parts gave light to those which followed; that they only were masters of the evidence, and upon that account best able to determine what to charge first and what next. In the absence of any conclusive precedent, the greater stress of convenience seemed to accord with the determination of the peers, who might, however, have declared it sooner, when the articles were delivered.

The course taken could scarcely occasion much surprise: a fortnight before, Mr. Bromley urged that they ought not to give the Lords the trouble of going through the whole impeachment, as twenty of the articles were altogether vain and needless, the two for high treason, could they be made good, comprehending every penalty. But the managers knew well, that this head of accusation was far too weak to present any chance of conviction; and that, though they might talk largely of flagrant high treason, their evidence fell completely short of legal proof. By insisting upon the order of time, they cleared a pathway to extricate themselves from open defeat. They took no notice of the Lords' message, that they would presently proceed farther on the trial, and negatived a motion to acquiesce under protest, in the manner prescribed. A few of the peers most inimical to the accused, headed by the Duke of Marlborough, with-

drew, and the rest (106) acquitted Robert Earl of Oxford and Earl Mortimer, and dismissed the impeachment. To save their credit with the nation, the Commons voted an address to the throne, to except the acquitted earl from the act of grace, expressing their disappointment at being reduced to the necessity, either of giving up rights and privileges of the highest importance to all the Commons of Great Britain, or seeing this great offender escape with impunity for the present.

Upon this vague threat of future retribution, the Commons built a dexterous retreat from that embarrassing position, into which party rancour had hurried them, and from which they could not escape without humiliation. Upon the earl's guilt posterity has pronounced a decisive though not unanimous opinion: he was betrayed by party tactics to precipitate the negotiations for peace so far that they compromised the honour of his country, but was as innocent throughout of high treason as of the sin of witchcraft.

Before his death, the acquitted traitor saw the ponderous instrument of state vengeance, from beneath whose clutch he had himself crept so cleverly, moved slowly once again, and this time not in vain, to the destruction of a political enemy, the Earl of Macclesfield. The miserable spectacle, of a Lord High Chancellor impeached and convicted of peculation, over which a veil had been drawn since Bacon's day, more than a century, was revived. Though Lord Macclesfield was the last judge who has passed the fiery ordeal of a public charge, he stood not alone in his corrupt practices. The Lord Keeper Wright is accused by Speaker Onslow of having received £1000 from Baron

Bury for making him a judge. The Speaker produces, as vouchers, Bury's book of accounts, in which the minute and entry were found after his death. How strange does the accusation sound in the ears of those, who in the present day properly deem it profanation to suspect the judicial bench of corruption, that, at the beginning of the last century, a Lord Keeper Wright, a Lord Chancellor Macclesfield, a Master of the Rolls (Trevor) should each have had an itching palm, and each been polluted with gifts! If our judges are not more wise or learned, they are, at least, more irreproachable than their predecessors, far purer than of yore.

---



## CHAPTER XI.

THE revelation of corrupt practices, which ensued on the impeachment of Lord Macclesfield, may raise a cynical laugh in those who sneer at the existence of public virtue, but must be read with sorrow and indignation by the better patriots, who regard the character of their country's great men as a portion of their vested inheritance. The tale of shame was clear and open, neither concealed nor veiled in mystery.

Shortly after the lamentable and ruinous catastrophe of the South Sea frauds, whispers had begun to circulate of deficiencies in the funds belonging to the suitors in the hands of the Masters in Chancery.\* One of them, Mr. Dormer, had speculated in that stock to a desperate extent, and had applied, as it afterwards appeared, the suitors' money in payment of losses, to the amount of more than thirty thousand pounds. It was not for some time that these rumours assumed any distinct shape of accusation, or involved the Chancellor himself in any suspicion of corrupt and irregular practices. "*Sed vires acquirit eundo.*" The rumour became at length so loud and general as to convince

\* Law Magazine.

Lord Macclesfield (after several vain attempts to solder the grievance or disguise its extent) of the impossibility of his retaining office. Accordingly, in the beginning of the year 1724-5, he surrendered the great seal into the reluctant hands of the king, who transferred it to the custody of Sir Joseph Jekyll, the Master of the Rolls, Mr. Baron Gilbert, and Mr. Justice Raymond, with a special injunction to take into their immediate consideration the accounts of the Masters in default, and the means of making restitution to the despoiled suitors.

Lord Macclesfield's resignation of the seals took place on the 4th of January. On the 23d, the presentation to the House of Commons of a petition from the Earl of Oxford and Lord Morpeth, as guardians of the person and estates of the Duchess Dowager of Montagu, a lunatic, complaining of a heavy deficiency in moneys belonging to her estate in the hands of one of the Masters in Chancery, gave occasion to a long debate, in the course of which much severe animadversion was cast on the conduct of the ex-chancellor.<sup>b</sup> The discussion was adjourned, for further and still more serious consideration, to the 12th of February, that the friends of the Prince of Wales might concert the plan of some proceeding directly criminating the corrupt earl. On that day, after reading certain reports from a committee of the privy council, which had been appointed to examine into the subject, Sir George Oxendon, an influential member of the Prince's party, concluded a severe accusatory speech, the charges in which he founded upon the statements of the reports, by moving to impeach the earl of high crimes and misdemeanors in his office of Chancellor.

<sup>b</sup> Parliamentary History, vol. viii.

His delinquencies, Sir George said, were many and of various natures, but might be resolved into three heads ; first, that he had taken into his own hands the estates and effects of many widows, orphans, and lunatics, and either had disposed of part of them arbitrarily to his own profit, or connived at the officers under him making advantage of them ; secondly, that he had raised to an exorbitant price the offices and places of the Masters in Chancery, and, in order to enable them to pay him those high prices and gratuities for their admission, had entrusted in their hands large sums of money belonging to suitors in Chancery ; and, thirdly, that in several cases he had made divers irregular orders :—"So that," the orator concluded, "in his opinion, this first magistrate in the kingdom was fallen from the height of the dignities and honours to which he had been raised by the king's royal bounty and favour to the depth of infamy and disgrace."

The motion having been warmly supported by several members of the same party (among whom was that mirror of political purity, Doddington, then one of the lords of the treasury), the government not venturing, in the temper of the House, to give it their unqualified resistance, made a half show of opposition in a proposal to refer the whole subject anew to a select committee. Pulteney, who then filled the office of cofferer of the household, pretended that it was derogatory to the dignity and prerogative of the House to found an impeachment upon the reports, without a previous examination into the proofs that were to support it. His motion was opposed even by several subordinate members of the government, and the impeachment carried by a majority of 273 votes to 164.

Sir George Oxendon, on the following day, solemnly impeached the earl at the bar of the House of Lords. The tide of public opinion ran strongly against him ; for his was not a crime to enlist popular sympathy in his favour. Staffordshire, it was said, had produced three of the greatest rogues that ever existed—Jack Sheppard, Jonathan Wild, and Lord Chancellor Macclesfield. The same exalted fate, which had requited the public labours of the two former worthies, was not very obscurely glanced at, as the fitting recompense of the doomed peer :—

The articles of impeachment were twenty-one in number, prefaced by a preamble, invidiously setting forth the favours and dignities which had been heaped upon the accused, in full measure and running over, and the oath he had taken duly to administer his office, and well and truly to serve the king and his people, poor and rich, after the law and usages of the realm. These articles were reducible to five distinct heads of accusation. The first ten charged the impeached earl with specific acts of corruption in the admission to their offices of several Masters in Chancery, from one of whom he was alleged to have extorted, as the price of his appointment, no less a sum than £6000 ; from two others the sum of 5000 guineas each, and from the rest different sums, varying in amount from eight to fifteen hundred guineas, aggravated in one instance by the circumstance that the Master, in whose room the corrupt appointment was made, had died insolvent, deeply in debt to the suitors of the court, and that the office was trafficked for without any provision for securing the satisfaction of those debts. The eleventh and twelfth articles charged Lord Macclesfield with admitting to the office of Master, for



the purpose of increasing his corrupt profit from the sale of their places, persons of inconsiderable substance and credit, wholly unfit to be entrusted with such a responsibility, and falsely representing them as persons of consideration and fortune. They charged him also with conniving at the payment of the purchase-money of their offices out of the suitors' moneys transferred to their hands, whereby the price of their admissions was immoderately enhanced, and persons of little property or credit were encouraged to contract for the purchase of a lucrative place, upon the prospect of so easy a method of raising the purchase-money. Great deficiencies had in consequence been incurred, and extensive embezzlements practised in the offices of several of the Masters so corruptly admitted.

The seven following articles accused the earl of various artifices for the purpose of evading the discovery of these defalcations, especially with attempting to compel the Masters to raise among themselves money to cover the immediate demands of the suitors, who pressed for a settlement of their claims, refusing to adopt plans proposed to him for the future security of the funds, and inducing several of the Masters to support each other in false representations of their ability and credit, that they might furnish a colourable answer to the inquiry directed by the Crown into the state of their accounts, and prevent, if possible, a parliamentary investigation. The twentieth article charged the defendant with borrowing of the Masters, for his own use, large sums out of the suitors' moneys, and the last embodied a particular accusation of a corrupt and improper appointment of the receiver of the estates of an infant heir, to the exclusion of the receiver nominated by the testamentary guardian,

and in contravention of the statute of Charles II., abolishing the court of wards and liveries.

At the expiration of a few weeks, Lord Macclesfield presented to the House of Lords his answer to the articles of impeachment. After acknowledging the favours bestowed upon him by the Crown, and setting forth in terms his oath of office, he went on to declare that, during his continuance in the office of lord chancellor, he never once had a design, or view, or wish, to raise to himself any exorbitant gain or profit, much less used, or even thought of using, any unjust or oppressive methods, to extort or obtain any sum whatsoever, as in the said articles was suggested; that such views and practices were inconsistent with the whole tenor of his life and actions, and that, in case it should be thought proper to lay before their lordships an account of his estate and fortune, and of the considerable sums of money he had distributed for the relief of others, it would appear that he was not such a designing, avaricious, and oppressive man, as in the said articles he was represented. By way of general answer to the charges relating to the receipt of money on the admissions to the office of Master, he first alleged the long usage to receive such presents which had ever been reckoned among the ancient and known perquisites of the great seal, and the acceptance of them notorious to all the world, and never before considered or complained of as criminal, and that, as he humbly hoped, the giving or receiving of a present on such occasions was not criminal itself, or prohibited by common law or statute. He then proceeded to give a specific answer to each of those articles, that the sums received were freely and voluntarily given: that, in two instances, on a subsequent representation of the

Masters who had paid them that they were thereby disabled from answering so much of the balances due to the suitors, he had delivered the money over in open court, to be applied to the suitors' benefit ; and that, out of one of the sums of five thousand guineas presented to him, he had retained no more than £1850.

To the articles charging him with the appointment of persons of insufficient ability for the proper discharge of the office, and with connivance at the practice of paying for their places out of the suitors' funds, he gave little more than a general denial. To the next class of charges, he replied with a protestation of his belief that Dormer's deficiency would in due time have been made good, that the plans of administering the funds, which had been proposed to him, had been rejected as being some impracticable, some insufficient, some inconsistent with the complete regulation he had it in view to establish. He denied that he had entertained any design or expectation of evading inquiry, asserted that it was on his own application that the Crown had deputed a committee of the privy council to inquire into the accounts, in order to the establishment of such regulations as might tend to the honour of the court, and the advantage of the suitors : that, believing the representations of the Masters to be true, that they had effects sufficient to answer their whole balances, he had advised them so to declare before the committee, and told them that, at a time when so many mouths were open against them as insolvent, it would be for their honour and interest to make it appear that they were able and sufficient, as he believed them to be, and had suggested that some of their own brethren might supply them with money

for the purpose, till they could raise it some other way, but was in no respect privy to any purpose of exhibiting a false show of their ability or credit. He gave also specific answers to the charges of the two last articles—upon them, however, no evidence was given by his prosecutors. He insisted on the benefit of the act of indemnity as to any of the alleged offences committed before its passing.<sup>c</sup>

The Commons replied in general terms that, although the answer was so evasive, inconsistent, and contradictory, that they might, upon the face of it, demand judgment forthwith, they were ready, notwithstanding, at the time appointed to maintain their charge by evidence, and demonstrate the guilt of the accused of the high crimes alleged against him. After an ineffectual attempt on the part of some of the peers most hostile to the earl to have the place of trial in the more public and accustomed area of Westminster Hall, it was appointed to take place at the bar of the House of Lords. The managers named to conduct the prosecution on the part of the Commons were no fewer than nineteen, the most conspicuous names among them being those of Sir George Oxendon, Sir Clement Wearg, Sir Thomas Pengelly, Arthur Onslow (afterwards Speaker), Doddington, and Sandys.

Sir Philip Yorke, then attorney-general, with difficulty obtained a remission from the painful employment of prosecuting his intimate friend and most constant patron, but is accused of bearing the misfortunes of his benefactor with all that convenient philosophy which common acquaintance bring to the sorrows of one another. The counsel assigned to the defendant, at his request, were, Mr. Serjeant



Probyn (afterwards chief baron of the exchequer), Dr. Sayer, Mr. Lingard (common serjeant), Mr. Robins, and Mr. Strange, afterwards master of the rolls. On the 6th of May the trial commenced with all the staid and solemn grandeur of a parliamentary impeachment. The charge having been opened by Sir George Oxendon, and the solicitor-general, and proof given of ministering to the earl the oaths of a privy councillor, and chancellor, of the value of his office, and the duties and official income of the Masters in Chancery, the managers proceeded to adduce evidence to support the specific charges of corruption in the appointment of those officers; the solicitor-general and Serjeant Pengelly assuming the chief conduct of the evidence on the part of the Commons, and the earl assisting and frequently directing the examinations and objections of his counsel with great acuteness and self-possession.

Some passages in the evidence of the Masters in Chancery exhibit an amusing picture, if it were not so miserably degrading, of these *respectable* dealings.<sup>d</sup> The first informer is Mr. Thomas Bennet, appointed in June, 1723:—"I applied to Mr. Cottingham and desired that he would acquaint my lord chancellor I had agreed with Mr. Horrocks to succeed him in his office, and desired him to let me know my lord chancellor's thoughts, whether he approved of me succeeding Mr. Horrocks. Soon after that, I believe the next day, or the day after, he met me and told me he had acquainted my lord with the message I sent; he said, 'my lord expressed himself with a great deal of respect for my father, Mr. Serjeant Bennet, and that he was glad of this opportunity to

<sup>d</sup> Law Magazine.

do me a favour and kindness, and that he had no objection in the world to me.' That was the answer Mr. Cottingham returned: he then mentioned that there was a present expected, and he did not doubt but I knew that. I answered I had heard there was, and I was willing to do what was usual. I desired to know what would be expected: he said he would name no sum, and he had less reason to name a sum to me, because I had a brother a Master, and I was well acquainted with Mr. Godfrey, who had recommended me, and I might apply to them, and they would tell me what was proper for me to offer. I told him I would consult them. Accordingly I did, and I returned to Mr. Cottingham, and told him I had talked to them about it, and their opinion was a thousand pounds (but I believe I said I would not stand for guineas), was sufficient for me to offer. Upon this Mr. Cottingham shook his head, and said, 'that won't do, Mr. Bennet, you must be better advised;' 'why,' said I, 'won't that do? It is a noble present;' says he, 'a great deal more has been given;' says I, 'I am sure my brother did not give so much, nor Mr. Godfrey, and those persons you advised me to consult with told me it was sufficient, and I desire you to acquaint my lord with the proposal;' says he, 'I don't care to go with that proposal, you may find somebody else to go;' says I, 'I don't know whom to apply to;' says he further, 'sure Mr. Bennet you won't go to lower the price,' (these were his very words; at least I am sure that was the meaning of them), 'I can assure you Mr. Kynaston gave 1500 guineas.' I said that was three or four years ago, and since that time there have been several occasions of lowering the prices, the fall of stock hath lowered the value of money, and I think

I mentioned Dormer's deficiency, and I did not know what the consequence of that might be, and therefore thought, at this time of day, when stock and everything had fallen, 1000 guineas was more now than £1,500, when Mr. Kynaston gave it. He still insisted he did not care to go with that message ; says I, ' only acquaint my lord with it, and, if he insists upon more, I will consider of it ;' says he, ' there is no haggling with my lord ; if you refuse it, I don't know the consequence, he may resent it so far as not to admit you at all, and you may lose the office.' Then I began to consider, and was loth to lose the office, and told him I would give £1500 ; he said Mr. Kynaston had given guineas. Then I asked whether it must be in gold, he said, in ' what you will, so it be guineas.' In a day or two after he came and told me that my lord was pleased to accept of me, and he should admit me as soon as opportunity served, and he would give me notice. Accordingly, on the 1st of June, he sent and desired me to come immediately, and to come alone, and to bring nobody with me, for my lord would swear me in that morning. Accordingly, I went, and the first question Mr. Cottingham asked was, ' If I had brought the money ?' I told him, ' to be sure, I should not come without it.' He asked me what it was in, I told him in bank bills, one of £1000, and the other £575. He took them up and carried them to my lord. He returned back, and told me my lord was ready to admit me. I was carried up stairs and sworn in his bed-chamber."

The same worthy gentleman admits, in another part of his evidence, that, when appointed, he was a younger brother, with an income of £250 a year, or thereabouts ; and that he had not bought the place,

had it not been for the cash of the suitors. The next witness was another Master, Mr. Elde, expelled the House of Commons, who gives a no less graphic account of the bartering upon his admission. Hearing of the vacancy of one of the offices, he waited upon the chancellor to solicit the appointment.

“The chancellor said he had no manner of objection to me, he had known me a considerable time, and he believed I should make a good officer. He desired me to consider of it, and come to him again, and I did so. I went back from his lordship, and came again in a day or two, and told him I had considered of it; and desired to know if his lordship would admit me, and I would make him a present of £4000 or £5000; I cannot say which of the two I said, but I believe it was £5000. My lord said, thee and I, or you and I (my lord was pleased to treat me as a friend), must not make bargains. He said, if I was desirous of having the office, he would treat with me in a different manner than he would with any man living. I made no further application at all, but spoke to Mr. Cottingham, meeting him in Westminster Hall, and told him I had been at my lord’s, and my lord was pleased to speak very kindly to me; and I had proposed to give him £5000. Mr. Cottingham answered, guineas are handsomer [he had, it is plain, a true professional distaste for pounds]. I immediately went to my lord’s; I was willing to get into the office, as soon as I could; I did carry with me 5000 guineas in gold and bank notes. I had the money in my chambers, but could not tell how to carry it, it was a great burthen and weight; but, recollecting I had a basket in my chamber, I put the guineas into the basket, and the notes with them; I



went in a chair, and took the basket with me in my chair. When I came to my lord's house, I saw Mr. Cottingham there; and I gave him the basket, and desired him to carry it up to my lord. I saw him go up stairs with the basket; and when he came down, he intimated to me that he had delivered it. (Cottingham subsequently states that he carried it up to Lord Macclesfield, and left it covered up in his study, without saying a word). When I was admitted, my lord invited me to dinner, and some of my friends with me; and he was pleased to treat me, and some members of the House of Commons, in a very handsome manner. I was, after dinner, sworn in before them. Some months afterwards, I spoke to my lord's gentleman, and desired him, if he saw such a basket, that he would give it me back; and, some time after, he did so.

*Question.* Was there any money it?

*Answer.* No, there was not.

The defence was founded on several grounds of law and fact. Lord Macclesfield relied, in the first place, upon the constant usage of his predecessors to receive money on the admission to the very offices, for disposing of which he was then impeached. He was able to prove but three instances, one in Lord Cowper's, and two in Lord Harcourt's time; the largest amount received being £800; and the money having been paid, in every case, out of the private funds of the parties before their admission, without invading or endangering the moneys of the suitors. To explain away the exorbitant amount to which the presents had been advanced under his own auspices, he next adduced evidence to show, that other offices in the Court of Chancery, particularly those of the sworn and writing clerks, had also risen greatly in price of

late years. The repayment by him, after his dismissal from office, of the money (£3000) received on the appointment of two of the Masters, whose accounts were in default—various attempts to effect a settlement of the deficiencies, on what he considered advantageous terms for the creditors—instances of his endeavours, from time to time, to compel his Masters to bring in their accounts ; but which never appeared to have been seriously enforced—the payment by him, out of his own pocket, of the sum of £1000 to one of the suitors, who had suffered by Dormer's embezzlements, constituted the principal facts urged in his behalf, rather in extenuation, than absolute denial, of the subsequent charges of the impeachment. It was then sought to remove from his conduct the stain of personal avarice, by calling witnesses to attest the munificent extent and disinterested character of his private charities ; his frequent remission of fees to the poorer clergy, on their presentation to livings ; numerous instances of the generous and unsolicited bestowal of money or preferment on persons of learning and character in reduced circumstances, and large donations to public or religious uses.

After the evidence in defence had been closed and summed up, his counsel were desirous of giving further proof of the private sources of his charities and the limited extent of his personal income. This, however, was objected to and disallowed, as irregular at this period of the proceedings. The noble defendant himself, after an adjournment of a few days, allowed to prepare himself and to recover from the bodily and mental exhaustion of the long inquiry already gone through, then entered upon his personal defence, in a speech of great length, ability, and judg-

ment,<sup>e</sup> contending that the receipt of a gratuity, on the admission to an office connected with the administration of justice, was not necessarily criminal in itself, unless an unfit person were admitted; nor was it an offence at common law, or under any of the statutes to which reference had been made. He combated the argument that there was an inconsistency in pleading innocence and claiming, at the same time, the protection of an act of indemnity; and, dissecting the voluminous evidence in support of the charges, exerted all the efforts of an acute and well-trained understanding to shade down the harshness of the proof against him, and place in the strongest light the explanations and palliatives which had been offered on his part, abstaining judiciously from any attempt at mere ornamental oratory, and almost from any appeal to the favourable consideration of his judges. That he did not succeed in improving the aspect of the facts was not owing to any want of ability.

The proceedings in accusation and defence terminated with the tenth day of the trial; and, on the following morning (May 25th), the noble judges pronounced their unanimous verdict (ninety-three peers voting on the occasion), that the accused was guilty of the crimes and misdemeanors charged upon him by the impeachment. Being brought to the bar, and formally acquainted with the determination of the House, he addressed his judges in a short deprecatory speech, in which he urged upon their compassionate consideration the cruel distemper which the fatigue and anxiety of the trial had brought upon him, the loss of his office, the public censure and reproach he had undergone, and the fact of his having already

<sup>e</sup> Law Magazine.

paid back a sum of £10,000 towards the liquidation of Dormer's deficiency. When he had withdrawn, a fine of £30,000 being proposed as the sentence, a motion was made to refer to the opinion of the judges the question, whether the sale of an office, having relation to the administration of justice, were an offence at common law. This proposition was negatived almost at once, and the imposition of the fine agreed to without a division—a punishment, which, whether we consider the magnitude and danger of the offences, or the amount of individual injury and suffering they had mainly contributed to inflict (for the whole deficiency in the suitors' moneys amounted to no less a sum than £81,000), we cannot pronounce to have been disproportionate or unreasonably severe. Such, however, was not the impression of his friends, one of whom has given weighty reasons for his opinion.

The judgment on Lord Macclesfield appeared to Dr. Pierce, Bishop of Rochester, who was every day present at the trial, a severe one. "It was given upon a statute so long ago made as in the reign of Richard II., which forbade the selling of the office of a Master in Chancery.<sup>f</sup> That statute had never been repealed, but a contrary custom had prevailed beyond the memory of man. Lord Macelesfield could have proved the fact to be so with regard to several of his more immediate predecessors; but, when he called upon his witnesses, who were then present, to prove the fact, Lord Townshend stood up and objected to it, saying, 'My lords, I hope you will not suffer witnesses to be produced to this purpose; for that will only show that this sort of corruption is hereditary,'

<sup>f</sup> Life of Dr. Pierce, Bishop of Rochester.



using the word hereditary, on this occasion, by a very ridiculous mistake." The knowledge of two circumstances, of which not many persons are aware, may contribute to remove much of the odium of the charge preferred against the noble earl, and of that of the sentence given upon it in the House of Lords. The one was, that, before Lord King, who succeeded him as chancellor, accepted of that high post, an additional salary of £1500 or £2000 a year was annexed, it was credibly said, to the post, out of the Hanaper Office, by way of recompense for the loss which would arise to the chancellor for the time being, by that judgment of the House of Lords, though he was still allowed to dispose of the Masterships to his friends and relations, or on the recommendations of men in power, who could in another way serve his friends and relations. The other circumstance was that, when some bill was brought before the Lords (it is not remembered what the bill was), a lord, objecting to some clause of it, that in time the Masterships in Chancery might come again to be sold, the Lord Chancellor King acquainted the House, that it appeared on their Journals, that, in King William's reign, when a bill for preventing the lords lieutenants of counties from selling the office of clerk of the peace in their counties was brought from the Commons to the Lords, a motion was made by one of the lords for a clause to be added, "that the lord chancellor should be restrained from selling the Masterships in Chancery ; but that the Lords, after a debate, rejected the clause, and passed the bill without it."

These pleas, however invalid, when construed by the rigour of the law, form a very sufficient apology

for the most lenient sentence. Two harsh propositions, which, according to the precedent in Lord Bacon's case, sought to declare the earl for ever incapable of any office or employment in the state, and to exclude him from sitting in parliament, or coming within the verge of the court, were negatived by very small majorities. On the former, indeed, there was an actual equality of voices ; and the vote in consequence, by the usage of the House, passed in the negative. A formal message having been communicated to the Commons, that the peers were ready to give judgment on the impeachment, when they, with their Speaker, should come to demand it, the friends of the noble culprit in that assembly still had the courage to raise their voices in his behalf. A warm debate, which lasted for six hours, ensued upon the question, whether they should demand judgment, and was at length carried in the affirmative by a majority of 136 voices against 65. The thanks of the House were then presented, in glowing terms, to the managers of the impeachment. The judgment having been formally demanded and pronounced, the noble prisoner was conducted to the Tower, until payment of the fine. He remained there but a few weeks, when the money was raised by a mortgage of his Oxfordshire property to his son-in-law, to whom the second earl paid the debt by instalments.

Fortunately for our country, there has not been a subsequent instance of complaint or fear that corruption had poisoned the pure sources of justice ; that considerations of private gain have cast their baneful shadow over the broad, pure, and open path of the judges of England.

The political martyr, whose exposure and punish-

ment wrought a national good, had been previously a favourite of fortune. The son of an attorney at Derby. Mr. Parker settled there, in the commencement of his legal career, as a provincial counsel, a personage much less frequent in those days than at present, from the comparative paucity of numbers, want of communication, and unimportance of country towns. An antiquarian has described, with laudable preciseness, the dwelling occupied by the clever lawyer, in the good town of Derby, in Bridge-Gate, at the front of the bridge, in the house next to the Three Crowns. He was elected recorder ; and, at the general election in 1705, when the whig party, to which he had warmly attached himself, was almost universally successful, had acquired sufficient local influence to be returned to parliament as one of the burgesses, with a member of the Cavendish family, retaining his seat, without interruption, until his elevation to the Bench five years afterwards. A manager of Sacheverell's prosecution, he is particularized by Burnet as having acquitted himself more ably than all his eminent colleagues—a distinction the more remarkable, as he was suffering from indisposition at the time.

Chief Justice Holt having died, during the trial, the eloquent apologist of the Commons was appointed chief of the Criminal Court in his room, and did not fail to launch all its rigours against the tory partizans, or pamphleteers, whose intemperance or personality brought them within the range of criminal informations and indictments.

One of his first duties was to preside at the trial of Daniel Dammaree for high treason, in pulling down meeting-houses during the absurd popular frenzy which accompanied Dr. Sacheverell's impeachment,

and thus constructively, according to the wide construction of lawyers, levying war against the queen. The poor rioter had huzzaed with drunken loyalty at the destruction of two dissenting chapels, and paraded round the bonfire in Lincoln's Inn Fields, piled up from the furniture, compelling all passengers to throw their hats into the air, in honour of the church martyr, and carrying a bedstead to the flames, in a sort of funeral procession. Of the rigorous and austere ability with which Sir Thomas Parker summed up the case against this turbulent waterman, the following passages present conclusive evidence; though a lawyer may not perhaps be justified in asserting, contrary to the weight of later authorities, that he strained the province of legal interpretation too far.\*

“ It is monstrous to see how people may be misled, that they should fall foul on the dissenters, and pull down the meeting-houses, when they are rather the objects of pity than anger. If they are not satisfied with the Established Church, which is the best in the world, and they lose the benefit and advantage of that excellent institution, they are to be pitied for their mistake; but why should any one be angry, because they do a prejudice to themselves? But this matter having been under the consideration of the legislature, and there being a law that allows them the liberty of serving God in their own way; since that liberty is allowed them, why should anybody be concerned that they enjoy it? And why should their meeting-houses be pulled down? But Dr. Sacheverell, at that time (I would not reflect on him: he has undergone a censure in another place), when he had fallen foul on the toleration, and represented it as an encouragement

\* Luder's Tracts.



to schism, and a ground of danger to the church, those people who thought him a confessor for the church, thought they could not do less than pull down those meeting-houses, which were the seminaries of schism ; and this doctrine of non-resistance, which is cried up, in all cases, to be the doctrine of the church, this doctrine is to be propagated by resistance: these people will resist, to show that they are not for resisting, and oppose the queen's guards, in vindication of that doctrine that nobody ought to resist. It shows that when a madness has got among the people, they cannot think as they ought to do, and many unaccountable things will be done, and therefore he might think it no blemish to his reputation.

“ If you believe the evidence, Dammaree was concerned in pulling down two meeting-houses: he was not present at Drury-Lane, that is, he was not proved to be there: but, if he set others on to do it, it is his doing; and he as much pulled down that meeting-house in Drury-Lane, as if he had pulled it down with his own hands. Besides, they tell you his declaration that he would have all of them down. Again, these gentlemen do not seem to deny but if the intention were general it would be levying war; if it were general where would it end? And it is taking on them the royal authority; nay more, for the queen cannot pull them down till the law is altered; therefore he has here taken on him not only the royal authority, but a power that no person in England has. It concerns all that are against the meeting-houses on one side, and all that are for them on the other, and therefore is levying war.” Never was a logical consequence pronounced more subversive of sober reason

and common sense than these high-sounding conclusions of the political chief justice.

Among other libellers, Morpew, the publisher of Swift's "Conduct of the Allies" (a pamphlet against which the government had been obliged to make a shew of displeasure by offering a reward for the discovery of the author), was summoned before the chief justice, threatened with severe punishment if he persisted in concealing the writer's name; and ultimately bound over to appear in the following term to answer a charge of seditious libel. The future dean repaid these proceedings, as might be supposed, with a hearty hatred. "I was to-day," he writes in his journal to Stella, October 28, 1712, "at a trial between Lord Lansdowne and Lord Carteret, two friends of mine, in the Queen's Bench. I sat under Lord Chief Justice Parker, and, his pen falling down, I reached it up. He made a low bow, and I was going to whisper him that I had done good for evil, for he would have taken mine from me. Parker would not have known me, if several lords on the bench and in the court, bowing, had not turned everybody's eyes and set them a-whispering. I owe the dog a spite, and will repay him at two months at farthest."

Defoe also, who celebrated the elevation of Sir Thomas Parker, with Io Pæans of whig triumph, but who became, on the exaltation of the tories, an unabashed retainer of their camp, having fallen under the enforced prosecution of the government for the publication of his Jacobite letters in 1713, found reason to abate his admiration of the learned knight's merits. When brought before him to be admitted to bail, the judge expressed, not very decorously, his gratification that the government had at length fallen foul of

so notorious a libeller, a compliment for which Defoe took vengeance, in the two succeeding numbers of his Review, in hearty vituperation of Sir Thomas Parker's conduct and opinions, for which he did not go unrewarded.

In point of fortune, the emoluments of his office were at that period even more amply adequate than at present to the fulfilment of all the duties, and to the maintenance of all the necessary splendour of his dignity. He received, however, in augmentation, a life pension of £1200 a-year.

Almost his last judicial act in the situation of chief justice, was to pronounce upon the important question then at issue between George I. and his son, in which of them lay the right of guardianship and control over the education and marriage of the younger branches of the royal family, the prince claiming those rights in his paternal, the sovereign in his kingly, character. The judges differed on the question: ten of them, however, with Parker at their head, considerably influenced, it was said, by his arguments and authority, certified their unqualified opinion that all the contested rights were vested by law in the Crown; a decision by which he purchased, and, in the end, bitterly experienced, the persevering enmity of the Prince of Wales.

The judgments of Lord Macclesfield (we anticipate somewhat in giving him the title by which he is best known) in the Court of Chancery have ever since commanded an authority second only to that of the most illustrious judges who have filled the seat of equity, of a Hardwicke or an Eldon. His merits with posterity must be called in aid to compensate the defects of his personal demeanour. The undisguised

favouritism which he displayed towards some in disparagement of other less favoured counsel, more particularly towards the all-fortunate Sir Philip Yorke, and the petulance which he was in the not unfrequent habit of directing to most of those who practised before him, contrasted unhappily with the graceful and dignified amenity of Lord Cowper, and raised him up enemies within the walls of his court, whose hostility he was afterwards doomed to experience to his heavy cost.

In November 1721, he was advanced to the honours of a Viscount and Earl, by the titles of Viscount Parker of Ewelme in Oxfordshire, and Earl of Macclesfield, with remainder in failure of direct male issue to that of his only daughter, the wife of a Hampshire baronet, Sir William Heathcote. At the period of his elevation to the woolsack, the reversion of a tellership of the Exchequer had been secured to his son, with a pension of £1200, until it should fall into possession, and he himself had then received from the bounty of the Crown, in addition to his former pension, a gift of the large sum of £14,000 (the accustomed outfit of the great seal being £2000 only), together with an annual allowance of £4000 in augmentation of the ordinary emoluments of his office! His lordship did not repay this profuseness of favour by any very zealous furtherance of the measures of the government. In all the important questions which at this period occupied the consideration of parliament, we find the administration, in which he filled so prominent a place, obtaining far less frequent or active support at his hands than it received from the purchased advocacy of Harcourt. Nor did the premier, on his part, make any troublesome effort to avert or



soften the fall of so unserviceable a colleague, when the storm of popular indignation burst over his head. The king alone, having personal cause for gratitude, proved himself not careless or ungrateful. Well aware that it was principally on his account that his favourite's delinquencies had been made the mark of prosecution, the king sighed as he struck his name out of the council book, and communicated to the disgraced earl, through Sir Robert Walpole, his intention to repay him the amount of the fine out of the privy purse, as fast as he could spare the money, accompanying the message with gracious expressions of his sympathy and continued favour. Within a year, accordingly, the earl was paid a sum of £1000 by the royal command. In the course of the next year, 1727, Sir Robert sent him word that he had the king's directions to pay him £2000 more, whenever he should apply for it. Unwilling to risk the forfeiture of the royal bounty by clutching it too eagerly, he let a month pass without making any application, when the unwelcome intelligence arrived of the king's sudden death on his way to Hanover. Lord Parker lost no time in waiting on Sir Robert to receive the money for his father, but was informed that his late majesty and he (Walpole) had a running account, and at present he could not tell on which side the balance lay—that he could not, therefore, venture to pay the £2000. Whether the wary minister was apprehensive of embarrassing in any degree the difficult game he had then in hand to retain his ascendancy in the councils of the new sovereign; or whether he was mean enough to seize this opportunity of gratifying a personal pique against his fellow-colleague, it is difficult to determine. The promised payment was never made, and here

ended, of course, all hope of reimbursement from royal gratitude or favour.

The unfortunate Earl of Macclesfield, bankrupt in reputation and almost in fortune, retreated to the seclusion of Shirbourne Castle, and there, withdrawing himself altogether from the embittered intercourse, and painful recollections of public life, found his chief occupations in the meditations and exercises of religion, the distribution of charity, and the cultivation of literature and science. Partly for the purpose of directing the studies of his son, who manifested an extraordinary aptitude in philosophical enquiries, and partly from a benevolent kindness towards the individual, he received and maintained in his house the father of the celebrated Sir William Jones, a mathematician of considerable eminence, but whose attainments constituted his chief wealth. This blameless and useful retirement he continued to cultivate till his death, which (as in the case of all distinguished lawyers his contemporaries) removed him before he could be said to have declined under the decay or pressure of old age.

He had for some years been subject to attacks of strangury, and his friend, Dr. Pearce, coming to visit him one day when he was staying at his son's house in Soho Square, in the month of April, 1732, found him suffering under an access of that complaint which had come upon him in the night before, so violent and painful, that he was already impressed with the conviction that it would prove mortal. His mother, he said, had died of the same disease on the eighth day, and so should he. On the eighth day, accordingly, his friend, who had visited him constantly during the

interval, found him past hope of recovery, and given over by his medical attendants; his half-superstitious belief having perhaps contributed to produce its own accomplishment. He felt himself, he said, drowning inwardly, and dying from the feet upwards. He retained to the last the perfect possession of his faculties, applied himself with pious resignation to the exercises of devotion, and bade adieu to his family and household with the same calm cheerfulness as if he were setting out upon a journey; and, about ten o'clock at night, having inquired whether the physician was gone, and being told that he was, he replied faintly—"And I am going too, but I will close my eyelids myself:" he did so, and in a few moments peacefully breathed his last, April 28, 1732, in the 66th year of his age. "This was the end," says Dr. Pearce, who relates this pathetic scene, "of this great and good man, who, during all the time I had the happiness of knowing him, seemed to live under a constant sense of religion as a Christian; at his hours of leisure reading and studying the Holy Scriptures, more especially after his misfortunes had removed him from the business and fatigues of his office." His body was opened by the celebrated surgeon, Cheselden, when the malady which carried him off was found to have had its origin in extensive ravages of the stone.

The fatal taint of judicial corruption, to expiate which Lord Macclesfield paid the forfeit of station, influence, and reputation, formed the most serious blemish in a character which, naturally free from faults of temper and prejudice, appears to have been distinguished by many excellent and some noble qualities.

The very wealth thus discredibly added to his income, was not hoarded to aggrandize his family, but was as liberally diffused as it had been ignobly acquired:

“ Though he were unsatisfied in getting  
(Which was a sin), yet in bestowing  
He was most princely.”

He was a munificent and discerning patron of science and literature, at a period when the former, at least, was lamentably neglected by men of power and influence in general. When the Saxon types which had been used in 1709 for printing St. Gregory's Homily were burned in the fire of Bowyer's printing-office, he bore the whole expense of cutting a new set, to be employed in printing Elstob's Saxon Grammar. He suggested to Bentley the editing of various editions of the classics, for the use of Prince Frederick, to be executed on a more correct and scholar-like plan than the Delphin editions, and undertook to obtain from the government a remuneration of £500 a-year during the progress of the undertaking ; but the doctor refusing his services for a less consideration than a pension of £1000 a-year for life, the project fell to the ground.

Of the general beneficence of the Chancellor, sufficient proofs were adduced upon his trial. The ecclesiastical patronage at his disposal he bestowed with the sincere design of rewarding learning and piety, and sustaining the interests of the church of which he was a zealous and devout communicant. Zachary Pearce, the learned and excellent Bishop of Rochester, was entirely unknown and unpatronized, until he obtained his notice by dedicating to him, when chief justice, his edition of



“Cicero de Oratore,” and thus laid the foundation of his future fortune.

Lord Macclesfield had by his wife Janet, who survived him but a few months, one son, George, who succeeded to the title, deriving from his father an estate of little more than £3000 a-year, incumbered too with a heavy debt. He distinguished himself by a devotion to the pursuit of abstract science, of which his rank has afforded few instances before or since, acquired the reputation of one of the first mathematicians and astronomers of Europe, and was chosen by a unanimous vote, President of the Royal Society.

The only literary production ascribed to the Lord Chancellor Macclesfield is a tract, printed in the second volume of Gutch’s “*Collectanea Curiosa*,” and entitled “A Memorial relating to the Universities,” being a series of propositions, the main object of which was to cure the Jacobite tendencies of those bodies on the accession of George I, by alterations in their course of study and discipline, and in the succession to college offices, fellowships, and livings. He proposes, for instance, that the heads of houses shall be chosen, not by the societies over which they were to preside, but by the great officers of state and some of the bishops; that the fellows should hold only for twenty years, at all events; that they should have more extensive intercourse with the world, by a more liberal dispensation with their residence in college: he suggests the foundation of a professorship of the law of nature and nations, and the institution of courses of lectures in chemistry, anatomy, experimental philosophy, and other branches of more general knowledge

than fell at that period within the prescribed course of academical instruction. By such methods he proposed to render the universities "more useful to the nation, by the increase of learning and augmenting the number of those who might have the benefit of a learned education, as well as by bringing those seats of literature to a better sense of their duty to their king and country."

That Alma Mater could have been taught orthodoxy by sciolists of Lord Macclesfield's school is a position which the majority of her sons will deny, whilst they rejoice at her continued escape from the tender mercies of the Whigs. From meditated attacks upon hall and college, the keeper of the king's conscience was suddenly and unpleasantly called away to a task for which his legal talents proved inadequate—the rescue of an assaulted office—the safety of his perilled fame.

Even those who are not prepared to admit that his condemnation was in a great degree political, an exercise of rigid justice, an act of extreme penal vengeance, must allow, in the words of Lord Verulam, that 'his criminality proceeded not from the troubled fountain of a corrupt heart, in a depraved habit of taking rewards to prevent justice, however he might be frail, and partake of the abuses of the times.' A bill to render illegal the putting to profit suitors' moneys had been rejected before his trial by the Lords, and a similar measure was a century later rejected by the Commons. "I supported," Sir Samuel Romilly records in his Diary, "a bill to regulate the office of Registrar, and prevent him from making profit for his own use of the suitors' money deposited in his hands.

I observed that the eighth article of impeachment against Lord Macclesfield was, that he had permitted and encouraged the Masters in Chancery to make profit of, and traffic with, the suitors' money; and I added, that if the House rejected this bill, they would themselves be guilty of that crime of which they had formerly accused Lord Macclesfield. Lord Arden, the registrar, whose fees amounted to £8000 a-year, has made £7000 a-year by interest and profits of suitors' money."

The House rejected the measure, careless of the shame, and, so far as their conduct could, have lightened the memory of the Lord Chancellor's sin. In his scutcheon may be woven the caution that "a gift perverteth the wise."

The Commons had for once impeached with effect, and reposed upon their laurels only to be roused to fresh exertions by the trumpet-note of civil war. At the close of the rebellion in 1745-6, the Speaker again proceeded in the name of the knights, citizens, and burgesses, to impeach Lord Lovat of high treason. The guilt of the aged traitor was proved beyond the possibility of doubt, though he had wavered long uncertain whether to betray the pretender or the king. The brutal chief of a trembling clan, he had exhibited in his tortuous course all the ferocity of a savage, but without his single-mindedness, and the chicane of civilization, with none of its refinements. He would fain have sacrificed on his trial an innocent son to save the miserable remnant of his own worthless life. After his condemnation, the wily peer bowed low to his judges with grim politeness, and a profane sneer dri-

<sup>h</sup> Romilly's Memoirs.

velled from his lips,—“Farewell, my lords, we shall never meet again in the same place, I am very sure of that!”<sup>i</sup> But the convicted rebel was bowed down with age,—

“every tear he shed  
Was three-score ten years old.”

It might have become the generous policy of a great and humane people to spare the scaffold so feeble a victim, and not have suffered his white hairs to go down to the grave in blood. The contempt, if not the compassion of Parliament ought to have stayed the axe. Impure and abject, he was the last sacrifice to its vaunted power of impeachment.

A century has nearly intervened, and never since has the Speaker gone up to the Lords to demand judgment in the name of the Commons of England. The annals of Parliament record but two impeachments since, which relate to periods less remote than those embraced in the present portion of our Memoirs, but which, as they complete the series, may be shortly noticed. The first, the prosecution of Warren Hastings, is to be imputed almost entirely to the magnetic influence of Burke, whose sense of justice had been inflamed by exaggerated tales of misgovernment in climes scarcely known, but inviting scrutiny through the dim haze of eastern magnificence; and whose imagination took fire at the glorious thought of vindicating India from oppression, and demanding redress for millions who could not ask it for themselves. His vehemence compelled the noblest phalanx of orators that ever engaged in parliamentary conflict to second the prosecution; and the unhappy ex-governor was borne down by the

<sup>i</sup> State Trials, vol. xiv.



weight of his accusers far more than by the weight of his imputed crimes.

The trial was alike unprecedented in its intrinsic magnitude ; in the depth of interest which it excited ; in the extent of time, and space, and detail, which it occupied ; in the grandeur of the topics which it involved ; and in the greatness, not less moral than adventurous, of the managers of the impeachment. In their box were inclosed Burke, Fox, Sheridan, Windham, and Grey, supported, should they require support, by the professional talents of Dr. Lawrence, Mansfield, and Piggot : a band unmatched in mental prowess, and rich with the spoils of the ransacked world of eloquence. When their stupendous chief, who rose far above the common stature of human intellect, had closed his most emphatic charge—"I impeach Warren Hastings in the name of our holy religion which he has disgraced ; I impeach him in the name of the English constitution, which he has violated and broken ; I impeach him in the name of Indian millions, whom he has sacrificed to injustice ; I impeach him in the name and by the best rights of human nature, which he has stabbed to the heart. And I conjure this high and sacred court not to let these pleadings be heard in vain—" the very peers who had to try the charge repeatedly exclaimed "hear! hear!" some of the most distinguished of the peeresses fainted away at the recital of the horrors which his fertile imagination had conjured up against the agents of the accused ; and, had the coroneted judges proceeded immediately to their Painted Chamber, and voted forthwith, there is little doubt that they would have pronounced a judgment of guilty, almost by acclamation. But, fortu-

nately for public justice, the length of the trial, which was without a parallel, produced a result that had no precedent. This national investigation, worthy of a nation's care, lasted six years in Westminster Hall, and a seventh in the chamber of Parliament. If we reckon from 1785, when Mr. Burke gave his notice, to the year 1795, when the acquittal was pronounced, it might vie for duration with the siege of Troy.<sup>k</sup> Peers and Commons and people groaned alike over a protracted inquiry, which dragged its slow length along with antediluvian disregard of the duration of human life, and their weariness could only be relieved for the moment by Burke's tone of lofty indignation. "The Colchester Committee had been kept sitting within a day or two of the time which their Lordships had devoted to the trial, and yet the committee had little more than to investigate paltry acts of bribery, amounting to a few odd pounds, shillings, and pence, and into the conduct of a returning officer, who was no more than a miller ! But their lordships had before them a governor-general of Bengal, who was charged with enormous crimes, and with having taken bribes and plundered the defenceless people of his government of sums amounting to millions."

In vain, to conciliate the attention of his audience, did the eloquent orator enliven the tedium of Indian names and topics with sallies of wit and sarcasm. "The rajah had been arrested at the hour of his devotions. It was alleged, in extenuation of the disgrace, that he was not a Brahmin. Suppose the lord chaplain [Thurlow] should be found at his devotions—the keeper of the king's conscience. Suppose he should

<sup>k</sup> Seward's Anecdotes.

be taken away. Would it remove the indignity that he was not a bishop? No! The chancellor would know and feel the disgrace. He would think of the devotions he had lost, and he would not care whether he were a bishop or no!" "None," says the reporter,<sup>1</sup> "were grave at this sally but the lord chancellor himself."

But, however hearty the laughter of his noble audience at the humour of the sportful manager, their convictions became strengthened year by year that the facts bore no resemblance to the gloomy picture which his imagination had sketched and filled with spectral delusions, that he too frequently substituted eloquence for proof, and supplied with acrimony the failure of evidence. There were no Indian accusers, and the sympathies of the noble in blood as in feeling drew closer to the side of Warren Hastings, as they perceived the truth of his justly indignant protest. "I am arraigned in the name of the Commons of England for desolating the provinces of their dominion in India. I dare to say that they are the most flourishing of all the states of India, and it was I who made them so. The valour of others acquired, but it was I who enlarged, and gave shape and consistency to your dominions. I maintained the wars, which were of your formation, not mine. I dispelled a confederacy of the native powers: I neutralized their efforts: I divided their members. I gave you all, and you have rewarded me with confiscation, disgrace, and a life of impeachment." His judges felt the complaint to be just; for "the pomp and circumstance" of accusation had dwindled down to comparative insignificance in

<sup>1</sup> Printed Report of the Trial.

proof.<sup>m</sup> “He had been called,” said his counsel, “Captain-General of Iniquity ; a man with a heart corrupted and blackened to the very core ; who had been guilty of every crime, from the meanest lie to the foulest murder. He had been four years on his trial. It was the subject of eager curiosity in India. Had one man been found to utter a complaint against him ? So far from complaint, testimonials of approval were accumulated.”

The Verres of India, as he was falsely designated, returned home with a moderate competence, and was amerced in the sum of £60,000 for the expenses of his defence. His acquittal was pronounced by twenty-three peers against six, on the 25th of April, 1795, on the 149th day of his trial. We have seen the many instances of escape at the bar of the Lords from differences between the two Houses, or from the Commons not appearing to proceed with their prosecution, but Mr. Hastings is the first British subject acquitted on the merits of an impeachment preferred by the Commons. According to the prophecy of his friend, the eminent Oriental linguist, Sir William Jones,<sup>n</sup> he did attain a complete, but late and costly, triumph over his persecutors ; his character came forth the brighter from the fires of their persecution. The loud echoes of applause with which the House of Commons wel-

<sup>m</sup> In conversation with a friend, Warren Hastings told the whole truth, and most unfavourably for himself. Jennings, familiarly called “Dog Jennings,” on his first meeting with the ex-governor, after his return to England, said, “My dear Hastings, is it possible you are the great rascal Burke says, and the whole world is inclined to believe.” “I assure you, Jennings,” was the reply, “that, though sometimes obliged to turn rascal for the Company, I was never one for myself.”

<sup>n</sup> Life of Sir W. Jones by Lord Teignmouth.



comed the hoary veteran of eighty, when he attended as a witness in 1813, on the renewal of the East India Company's charter, formed the best atonement that the sons could make for the intemperance of their fathers, and well became the spot which had rung so often with denunciations of his shame. He was rewarded with a liberal pension from the Company, which had profited largely by his imputed crimes ; his statue was erected in token of their gratitude ; and he received the tardy honour of a summons to the Privy Council. The peerage would not have been disgraced, had his name, once sullied by misplaced calumny, been added to its ranks ; had the sovereign made reparation for the nation's wrong. But, even at the heavy cost of temporary opprobrium to the accusers, and personal suffering to the accused, this great investigation can scarcely be regretted, as it taught the world the anxiety of a British Parliament for justice ; that not even royal power could shield a suspected culprit, who had swayed one hundred millions of people, or disarm the vengeance of the national inquest. We applaud this grand investigation of crime, at the very moment of rejoicing over the acquittal of a great man who had not been criminal.

Equally a subject of congratulation is the result of the impeachment of the frank-hearted Lord Melville, one of the most useful ministers this country ever undervalued, a gallant and ready debater, for forty years in the public service, who, in 1805, when at the head of the glory of England—her navy—was subjected to the ignominy of a state prosecution, for having connived at the withdrawing from the Bank of England, for purposes of private emolument, sums issued to him as treasurer of the navy, and placed to

his account at the Bank, contrary to the provisions of a statute introduced by himself. Careless and confiding in money matters to a fault, he had suffered his paymaster to draw large sums of the public money from the Bank of England, and deposit them at a private banker's, for his (Mr. Trotter's) personal gain. For this imprudence he suffered most severely, was struck out of the list of privy councillors, compelled to resign his office of first lord of the admiralty, knelt as a culprit at the bar of the Lords, and was compared by Whitbread to that Lord Verulam, who, in the agony of his soul before his peers, confessed that he had been guilty of peculation. But there was no pretence for the comparison: the head and front of Lord Melville's offending was an over-reliance on the integrity of his subalterns, and a too facile acquiescence in their infringement of the clauses of a stringent act of parliament. He was wholly guiltless of personal corruption, and his character came out even more untarnished than that of Warren Hastings by the smoke and ashes of the furnace. He was acquitted of all inculpation on his honour by a large majority of his brother peers, and their verdict has been fully ratified by posterity. The hatred of a Dundas dynasty has passed away; and in the clear calmness of sober judgment, none suspect the perfect integrity of a too negligent statesman, but honest, generous, and just. The conscientious Wilberforce, whose doubts occasioned the trial, has proved in his diary, how completely his confidence in the friend of former years was restored, by mentioning the cordial shake of the hand which Lord Melville had given him on a chance meeting, and recording that he would not have parted with it for a thousand pounds.

We may conjecture, from the lapse of nearly half a century since this important trial, that the responsibility of an English statesman is now confined to the loss of place and of fame. It is not improbable that this ponderous state prosecution for political misconduct will never be revived; that it is laid aside, like the battle-axe of Richard Cœur-de-Lion, too heavy for modern arms to wield with effect; or, like the sword of the Black Prince, as a relic in the Sanctuary, rather an object of reverence than of terror, more honourable in its rust than in its edge. May it long continue in abeyance, like another valued privilege of the Commons—their power of refusing the supplies—undisturbed as the royal veto!

## CHAPTER XII.

---

WE proceed to an inquiry, not devoid of interest or amusement, into the many changes which have been wrought by time in the internal economy of the grand inquest of the nation ; to consider the *physiognomie morale* of this great assembly, and to pause awhile from the history of penal vengeance, that we may glance at the persons of those who inflict it. The pleasure of the investigation is not dissimilar to that with which, in the days of reading Homer, we turned from his description of battles and slaughter to the open empyrean, where sat the wielders of the thunderbolts, and gazed into the recesses of their penetralia, as they joined in high debate. Of the poetry indeed which attended that search there is none ; but our scrutiny relates to as august a presence, and, even though prosaic, may be rendered more complete.

The numbers of the assembly were long in constant fluctuation. Two hundred citizens and burgesses sat in the parliament which Edward I. held in his twenty-third year, together with seventy-four knights, to whom they were far inferior in weight and authority,



notwithstanding the numerical disproportion.<sup>a</sup> The dignity of ancient lineage, the importance attached to territorial wealth, and the reverence paid to the military above the civil character, in times when the feudal spirit had scarcely waned and chivalry was in its zenith, made these burgesses vail their heads to the landed aristocracy.<sup>b</sup> It is manifest from our old chroniclers that the knights bore the brunt of the battle against the Crown and peers, doubtless with some support from the representatives of towns, but irregularly rendered, and not highly prized.

The House consisted, in Fortescue's time, and under the Plantagenets, of three hundred members, though the precise number was constantly changing. To the middle of the fifteenth century, the numbers were rather diminished than augmented, petty towns feeling more acutely the burden than the benefit of burgesses, and seeking any excuse to evade the payment of their wages. Richard II. granted as a boon to the borough of Colchester, towards defraying the expenses of fortifying the town with stone and lime, that for five years they should be discharged from finding or sending any burgesses to parliament.<sup>c</sup> The county of Northumberland obtained a similar exemption from Edward III., on the plea that they were so harried by the Scots, that they had no money to pay two knights for setting out on their journey. The gallant town of Newcastle-upon-Tyne sent no burgesses, for the still better reason that the safety of the city was too much perilled for them to spare a single citizen who could man the walls. The sheriff of Lancashire, for several successive parliaments, implored the clemency

<sup>a</sup> Burgh's Disquisitions.

<sup>b</sup> Hallam's Middle Ages.

<sup>c</sup> Pryme's Ancient Writs.

of his liege for the places summoned to return members in his bailiwick, that they could not return any citizen or burgess, on account of their impotence and poverty.

But when the council of the nation had obtained higher consideration, and began to interfere with more boldness in affairs of state, a dim conviction slowly dawned upon the minds of the constituency, that the privilege was at least commensurate with the cost. Henry VIII. conceded to the Principality the boon of returning twelve members to represent the Welsh marches; and, on their petition, added four members to the county palatine and city of Chester, hitherto unrepresented. The sovereign, by virtue of the prerogative, never questioned till its final exercise by Charles II., granted the franchise to new boroughs or restored it to the old. In Cornwall alone, Edward VI. added twelve members, Queen Mary four, and Elizabeth ten. Twenty-four boroughs had the privilege of sending members restored to them by James I., and must have been willing to incur the charge; for as many as fifty-one boroughs never recovered the right which they had voluntarily abandoned, giving up their birthright, with Esau-like rapacity, for a mess of pottage. From the reign of Henry VIII. to the accession of Charles, the House had received an addition, by writs from the Crown, of fifty-seven members.

The House claimed for itself and exerted a similar privilege. Prynne complains that gentlemen, over-ambitious of being elected members of parliament, failing in their attempts upon their own county, and having good friends in the Commons, have obtained a favourable report for some forgotten borough, which

had ceased to return burgesses for one or two hundred years; and, with the connivance of the House, procured fresh writs with a view to their own election. "How valid such elections are in law," says our antiquary, "revivals of obsolete returns upon one or two precedents at most, without a special licence from the king, after so many years' discontinuance, I shall refer to the consideration of those whom it most concerns. If any borough became so poor and impotent as to be unable to pay the expenses of representatives, they actually lost, and ought to lose, their privilege. If these petty places were put to pay expenses to their burgesses, as they ought by law, and not feasted, courted, rewarded by them for their voices, as of late degenerate times, they would make petition, as Coryton did, to be discharged from that burden, instead of procuring charters or writs to elect them."

The terror of a call upon their purse becoming each generation more remote, and king and Commons uniting in their desire to multiply returns, they rose gradually to the number of 493, the total amount when Coke presided as Speaker. That pedantic lawyer boasts of the number as contrasted with the early Roman senate.<sup>d</sup> "Romulus had but one hundred senators. When there is least appearance there is least success in parliament. In the seventh of Henry IV., holden before the Duke of Bedford, of the lords spiritual and temporal appeared but thirty-one in all, at which Parliament there was but one act passed, and that of no great weight." Between the years 1601 and 1640, the House received an accession of twenty-six members: the first Parliament of

<sup>d</sup> Coke's Institutes.

James I. containing 470, his last Parliament 478, and the Long Parliament 506.<sup>e</sup> None effected more good, but with considerable diminution in numbers, in a short space of time, than the Convention which established the Revolution, and was composed of all who had sat in Charles the Second's parliaments, and thought proper to attend, 160 in all.

When Charles II., by virtue of his prerogative, added two members to Newark, the House looked coldly upon strangers indebted for their seats to the favour of the Crown. In consequence of this growing jealousy of the prerogative, that sagacious monarch waved all further additions to a body for which he had no paternal fondness. He would much rather have decimated their ranks, and changed a host of mutineers into an army of martyrs. The only two occasions on which the number of the representatives was afterwards multiplied was on the union of the two sister countries, when there came not relays of two or three, but whole battalions; in 1706, forty-five Scottish, and in 1800 no fewer than one hundred Irish members. The Scottish recruits acquitted themselves for the most part *cannily*, and proved an effective, though silent, ministerial cohort. The Irish, on the contrary, have added far beyond their relative proportion to the length and frequency, not less than to the eloquence and fervour, of debates. Reversing all methods of former computation, eight out of ten have actually proved speaking members. The number still preserved of 658 would be far too unwieldy for deliberation and debate, were there a constant and punctual attendance, and might form a fair excuse for those worthy gentlemen, accustomed *de pedibus ire in*

\* Lord J. Russell's English Constitution.



*sententiam*, to abstain from the crowded floor or gallery till the very moment of division.

The earliest measures taken for enforcing a punctual attendance of members appear to have been most stringent and effective. The knights for the counties of Gloucester and Oxford (50 Edw. III.) were not allowed their wages, for the simple reason bluntly stated, "because they neglected their work." An old statute<sup>f</sup> declared the law and custom of Parliament to be, "that no members have writs to levy their expenses but those who staid to the end of the session, such only excepted who had licence to depart, who should have their expenses down to the time of departure, provided they returned to the performance of their duties. This loss was accounted a great disparagement, yea punishment, in former times, making them contemptible in the counties and cities for which they served." The burgesses, however, appear to have had, and to have exercised, a more free licence of attending, their presence or absence not being deemed a matter that required much consideration. Mr. Hallam<sup>g</sup> thinks it highly probable that a great part of those elected for the boroughs did not trouble themselves with attending in parliament. The small number of writs for expenses of boroughs, collected by Prynne, whilst those for knights of the shire are almost complete, lead to a strong presumption, that their attendance was very defective. Sometimes an elected burgess absolutely refused to go, sometimes he crossed the seas from Calais, there being one instance, and only one, of wages allowed to the representatives of the French city. When wages went out of fashion, fines came in their stead. Several mem-

<sup>f</sup> 6 Henry VIII. c. 6.

<sup>g</sup> Middle Ages.

bers having seceded, in the reign of Philip and Mary, to avoid joining in the penal legislation which sought to extirpate protestantism by fire and sword, a criminal information was filed against them in the Queen's Bench, to which some submitted, and were fined; the rest traversed, and escaped judgment by the queen's death. Coke has preserved a list of their names, thirty-seven in all, as patriots;<sup>h</sup> but true patriotism does not consist with deserting the post of duty.

A similar severity to the absentees was adopted under Elizabeth. In the twenty-third year of her reign, a list of the names of those who had not attended was handed to the clerk of the crown, with instructions to issue no writ for their wages, but to deliver in their names on the first day of the ensuing session, when each knight who had persisted in absenting himself was fined £20, and each burgess £10—a very heavy fine, when we take into account the comparative poverty of the time, and the diminution of at least four-fifths in the present standard of value. Omissions being thus sharply visited, the attendance of members became so general under James, that fresh seats were required for their use. When the House prepared to risk extremities with his successor, a more stringent order than any that had yet appeared in the Journals was adopted:—<sup>i</sup> “5th May, 1641. That all members that are in town and not sick, do appear here to-morrow at 8 o'clock, and their non-attendance shall be accounted a contempt of this House, upon which the House shall proceed as against a person not worthy to sit here, and that no member leave the town without special licence.” The highest numbers on any division had occurred two

<sup>h</sup> Coke's 4th Institute.

<sup>i</sup> Journals, vol. iv.

months previously to this despotic order, on the 1st of March, 1641, when 383 members recorded their votes. After the king's declaration, the number fell to nearly 80, and never rose higher than 201.

Clarendon comments with great severity, but not more severely than their conduct deserved, on the base treachery of those who, from supineness or cowardice, deserted their posts in the hour of peril.<sup>k</sup> "I know not how those men have already answered it to their own consciences, who, having assumed their country's trust, and, it may be, with great earnestness procured that trust, by their supine laziness, negligence, absence, were the first inlets to these inundations, and so contributed to these licences which have overwhelmed us. For by this means a handful of men, much inferior in the beginning in number and interest, came to give laws to the major part, and to shew that three diligent persons are really a greater and more significant number than ten unconcerned."

An excellent resolution was adopted by the House on the 5th of January, 1640, and declared to be a constant rule, "that Mr. Speaker is not to go to his chair till there be at least forty in the House." This rule was certainly intended to prevent questions being carried by surprise and in a thin House; and, as it is essential to the fairness of proceeding, it has been ever since preserved inviolate, both as to the number present when the Speaker takes the chair, and as to his quitting it again immediately, if past four, and the number are not present.<sup>1</sup> Why that specific number forty should have been fixed upon as requisite to make a House, no conclusive reason has been assigned. It has been

<sup>k</sup> History of the Rebellion, vol. i.

<sup>1</sup> Hatsell.

conjectured<sup>m</sup> “ that, as forty was the number of English counties, exclusively of the twelve Welsh, it was intended that there should be always one member present for each county ;” but this may be considered a fanciful conjecture. The number was most probably chosen by accident, as the fitting medium between rigour and laxity, just sufficient to insure a fair hearing, without taxing too severely the attention of honourable members.

This safeguard was required to correct the general laxity of discipline and attendance which succeeded the Restoration. Great exertions appear to have been made by the Pensioner Parliament to secure a fuller meeting. A proposition for doubly assessing all members who had been defaulters, in the bill of subsidies, gave rise to a lively debate. Sir Thomas Clifford, always impetuous and abrupt, was for expelling all absentees.<sup>n</sup> “ For a rod or terror, set a day a month hence, and if you are not satisfied with their excuse for absence, send out new writs.” Sir Robert Howard spoke in mitigation, stating, that not above forty of five hundred were wanting, and was seconded by Mr. Henry Coventry. “ What great charge do gentlemen come at here by being chosen knights of the shire ! Shall not a gentleman go home and look after his estate, now lands are thrown up ? If your rigour be so great, and your session so long, you will have none but such as have nothing else to do ; unless you build your house bigger, it will not hold us. Would have inquiry into your members that have not been here for two or three years together.”

As the contest ran close between the court and country party, they united zealously in efforts to col-

<sup>m</sup> Dwarris on the Statutes.

<sup>n</sup> Grey's Debates.



lect the absentees, and the Speaker wrote to every place for which there was a defaulter, to signify the absence of their member, which was thought a sufficient punishment for a modest man.<sup>o</sup> To move their feelings through the influence of the pocket, an order was made that the absentees should be fined £40, and if they refused to pay the fine, then to be committed to the Tower. The same order was renewed in 1678 against any who should be absent from the House for three days without leave. On the list of absent members being afterwards read, twenty of them were not excused, but directed to be sent for by the serjeant, to pay his charges, to be brought by him in custody to the bar, and then to be committed to the Tower. The secret for this excessive harshness consists in the near approach of numbers and hard run division.

In the address against the Earl of Lauderdale, the majority in the most numerous House that had met in Charles's reign consisted of two only, 176 to 174. Even this full House of 350 left still a third wanting. As the nation was then preparing for war, a member proposed that the fines extorted from negligent or idle senators should be employed in building a ship to be called "The Sinners' Frigate."<sup>p</sup> He should rather have suggested a cock-boat, from the small amount of fines collected. The cause of this comparatively thin audience, the manner in which members dissipated their time, so little dissimilar from the habits of their successors, has been vividly described by Prynne, who interfused with his sectarian intolerance a considerable portion of good sense.<sup>q</sup> "If members during the session shall, like vagrant, apostate monks, who desert

<sup>o</sup> Marvell's Letters.

<sup>p</sup> Marvell.

<sup>q</sup> Brevia, 4th vol.

their cloisters and cast off their habits, neglect their daily service to expedite the great affair of the king or kingdom, wasting their time in taverns, play-houses, dicing-houses, cock-pits, tennis-courts, bowling alleys, or in visits and compliments day after day, and rambling abroad to such places at unseasonable hours in the night, in antique, unparliamentary robes—vestments fitter for a mask or a stage than the gravity of a parliamentary house, or only come and peep into the Parliament House once or twice a-week, to shew themselves in such disguises, or ask what news, and what they are doing; or to talk with some other members, or to promote some private business for themselves or their relations; or to dine at committee dinners or ordinaries, or to wait upon some lady, mistress, friend, to a private committee to solicit or promote their business; or else shall spend most of their time in pleading or soliciting their clients' or own causes in other courts, or in following their own callings, to the retarding or disappointing of the public, whereby committees on public bills are forced to be adjourned from day to day, against their trusts and duties—I make little question but that their privilege *morando* is forfeited by their non-attending."

No creditor of the privileged class was foolhardy enough to act upon this legal opinion. The ingenuity of the most rigid formalist could devise no further remedy than exposure, and pecuniary mulct, and temporary personal punishment, though some hinted again at the propriety of expulsion. "In Chancery," said Sir Thomas Clarges, "when people do neglect their trusts, other trustees are chosen. This of serving here is so great a trust, that he would have letters sent to the several counties and boroughs, to give them

notice how they are represented." That promises might prevail where threats would prove inoperative, notices were sent to their particular friends by the ministers of the Crown soliciting their attendance. The commencement of this custom, a matter now of regular official routine, gave great umbrage to the country party. "The House is informed," Grey tells us in 1675, "of certain letters sent to particular members, to summon them. Sir Henry Goodricke thinks that his family has served the king faithfully, and wonders that he has not received a letter as well as his neighbours." The wrath of the worthy knight was soothed by a pleasantry of Mr. Secretary Coventry, who stated that the letters had been sent by the king's express command. Shall any man ask the king, why not write to one man as well as another? There is no reason to imagine surprise. A Cambridge scholar was asked why he wore but one spur. He replied that, if his horse went on one side, he would be hanged if the other side were left behind." How characteristic of the times was this sally of the adroit courtier, who laughed away the royal attempt to pack a House under cover of a fool-born jest.

Strenuous efforts were tried in the first Parliament after the Revolution, to secure a full attendance. Previously to any discussion of importance, we find it ordered,<sup>r</sup> that the serjeant-at-arms do go to the several bars in Westminster Hall, and require all the members there to attend the service of the House. Whenever any important question of law was agitated, the gentlemen of the long robe received a peremptory mandate forthwith to quit their private for their public clientship, at the risk of committal for

<sup>r</sup> Journals, vol x.

contempt. To prevent loiterers from stealing away after a call of the House, it was ordered, “ December, 1692, that no member do go out of town without leave first had of the House; and that, in case any member shall go out of town without such leave, he shall be sent for in the custody of the serjeant.” But indolence, pleasure, or variety of occupation seem to have overcome these restraints, and to have swelled the number of absentees. In February, 1693, the Speaker was directed to write letters to the sheriffs of the respective counties, in the following form:—“ Sir, the House of Commons having taken notice of the absence of several of their members, I am commanded to acquaint you with it, that you may give immediate summons to all members within your county to attend their service in parliament, on Wednesday, 14th March next, notwithstanding any leave of absence, the House of Commons intending to proceed with all severity against all such of their members as shall then neglect their attendance; and you are to give an account of the receipt of this, and of what you have done hereupon unto your loving friend. From the House of Commons, 28 February, 1693.”

Sometimes the remedy suggested was worse than the disease. A motion was made by some zealous sitter, on the 17th of February, 1695, for an address to the throne, that the assizes might be put off for a fortnight longer than the times for which they were respectively appointed. The good sense of the majority—183 against 122—prevented this most inconvenient precedent, a hindrance and delay of justice.

By the exercise of wholesome vigilance, by remonstrance, and menace, and coercion, the tendency



of members to stray was kept in check. The clerk of the House being directed, in 1698, to lay on the table a list of such members as did not appear by the rolls to have attended during the session, they were found to be only twelve, and were all excused, from proved inability to attend, by reason of absence beyond sea, of sickness, or of their great age and infirmities. Among the absentees excused was Methuen, Lord Chancellor of Ireland, and ambassador to Portugal, author of the Methuen Treaty, who yet fancied he had time to represent a close borough. Such incompatible offices could scarcely furnish legitimate reasons for non-attendance.

A better reason for the compulsory absence of many members during the winter season—the sessions of parliament previously to the Union with Ireland usually commenced in October or November—may be found in the difficulties of travelling, the slowness and inconvenience of communication between London and the provinces, and the badness of the roads. In the early days of parliament, when wages were allowed, the knights of the shire for Essex and Hertford had the expenses of one day awarded for their travels to Westminster; the representatives for Cornwall and Cumberland, eight days. A distance of forty miles was considered a good day's journey. When the second Lord Clarendon travelled in state to assume the government of Ireland, he informs us, in his Diary, that he journeyed twenty miles a day, the greater slowness being probably deemed more in accordance with his dignity. Thoresby, the antiquary, in 1709, speaks with as much dismay of his winter journey from Stamford to London, as if he had been perilling life in the steppes of Tartary. “Having the

encouragement of some of the Scotch gentry, who must of necessity be at the parliament at the time appointed, we ventured upon our journey, being fourteen in company, having the post guide. We found some part of the road better than we expected, considering the dismal account we had of it, other parts very bad, and the snow terribly drifted, but our merciful protector preserved us, that not one of the company got any prejudice, and we reached Huntingdon that night.”<sup>s</sup> Having mastered his difficulties, and been safely lodged in the metropolis, he continues, “I have the greatest cause of thankfulness that, being exposed to the greatest dangers by my horse’s bogging at any coach and waggon we met, I received no damage, though the ways were very bad, the ruts deep, and the roads extremely full of water, which rendered my circumstances, often meeting the loaded waggons in very inconvenient places, not only melancholy, but really very dangerous.”

Half a century later, we find that right reverend buffoon, Warburton, chuckling over the miscarriage to which the transit of members was exposed.<sup>t</sup> “The malady among the horses is so extensive, that the ministers will find it difficult to get up their absent members. Should you not burst your sides [this question is addressed to the grave Bishop Hurd!] on seeing a Cornish or a Scotch member dragging himself through all incumbrances in a post-chaise, with a cortège of four or six asses?” It was necessary that the Scotch members should encounter the costliness of post-chaises, the stage-coaches, which usually performed the journey in eight days, God willing, being laid up for the winter season. There were no trus-

<sup>s</sup> Thoresby’s Diary.

<sup>t</sup> Warburton’s Letters to Hurd.

tees of roads in those days, no turnpikes, no lamps in the highways approaching to large towns, or in the streets. There was no rolling, in smooth luxurious comfort, inside one of her majesty's mails from one extremity of the empire to the other : there was no railway carriage, rivalling the fairy carpet of the Arabian Tales in its rapid transit, and almost annihilating time and space to make the whippers-in happy. Diligent members who now travel two hundred miles by rail in one day to attend an important debate, and, taking advantage of the night, are at their own breakfast tables, or a Liverpool race-course, before the morning papers have published their names in the division, should rejoice over the improved facilities of departure, and visit with feelings of indulgence and compassion the less constant, because far more difficult, attendance of their predecessors.

Even now, the following translateable extract from a treatise of Jeremy Bentham's shows how little this attendance is to be relied upon ; how frequently members disappoint the longing eyes of Parliament ; how large is still the list of absent without leave—absent on permanent duty, or missing !

“Some fifty or sixty years ago, sat for Essex a Mr. Lowther—report of the time £20,000 the expenses—staid out his six or seven years, and but once in the whole time took his seat. Could a sense of duty be expected to operate on such men ? No, no, indeed ! as well to the deaf adder, or to the congregation to which no minister but Saint Anthony ever preached, might any such sermon be addressed. Think whether there be that imaginable shape in which uncorruption would sit upon honourable members more gallingly than in that universal constancy of attendance—a

shape under the pressure of which, unless they respectively gave up their seats, the land-officer, the sea-officer, the diplomatist would have to give up their commissions, the governor, or other office-bearer in the distant dependencies his office, the lawyer his practice, the official lawyer his office and his practice, the fox-hunter for days and months together his dogs and horses, the opera fancier his operas, the Bond Street loungee his lounges! ”

Mr. Bentham proposes means by which he thinks constancy, punctuality, and universality of attendance would be secured, namely, a Daily General Attendance-Table, “exhibiting for each day the name of every member present at any time of the sitting, together with the part taken by each on each question, on which there has been a division. If this publicity was insufficient, each member should deposit on his election with the clerk a sum of money, say merely for illustration, £400. A computation is made of the greatest number of days in the year during which it is probable that the House will sit, say as before, 200. Each day of attendance, the member receives back from the hand of a clerk appointed for that purpose, £2, and at the end of the year, if the number of days has fallen short of the computed number, £2 is returned for each day whereby it has so fallen short. If the aggregate of the sums thus forfeited on each day were divided among the members attendant on that day, the force of reward would be added to that of punishment.”<sup>u</sup>

This whimsical and visionary author has suggested in another work <sup>\*</sup>a series of valuable tables, the inspection of which would be almost as melancholy as of the empty

<sup>u</sup> Plan of Reform.

<sup>\*</sup> Plan of Parliamentary Reform.



boxes of the apothecary in Shakspeare. “Number of days on which the Speaker took the chair, but for want of forty members, business could not be begun upon.—Number of days on which, by the departure of members, a deficiency in the number present as compared with the number that should be present having been produced, and notice publicly taken of it, the business was stopped.—Number of days on which a deficiency having taken place, business went on notwithstanding, the Speaker beholding the deficiency, but no other member noticing it.—Numbers of members on the several divisions. —A selection of two contrasted classes of cases, one, in which the importance of the question being in a remarkable degree high, the numbers were in a remarkable degree low ; the other, in which the importance of the question being in a remarkable degree low, the numbers were in a remarkable degree high.—Number of the calls of the House in a year !”

In the mortification with which the perusal of such a table must have filled the minds of many, the eccentric author of this proposal would probably not have participated ; for Jeremy Bentham was a disappointed candidate for admission to parliament under the auspices of the first Marquis of Lansdowne, and brooded over his disappointment. But a more grave censor, who felt his own honour identified with the honour of a House in whose service he had passed the most valuable years of his life, Mr. Hatsell, has urged the importance of enforcing calls, and of compelling members to attend, in terms that reflect credit on the monitor, and ought to be well weighed by those who are the subjects of his admonition.

“It has not been customary, of late years, to

enforce the calls of the House, by taking members who do not attend into the custody of the serjeant : in the twenty years that I have attended at the table, there has not occurred a single instance. It is not for me to determine whether it would not be more prudent not to order a call than to make it inoperative by not enforcing it. Notwithstanding the great anxiety, trouble, and expense which many persons' put themselves to, to obtain a seat in the House of Commons, it is inconceivable how many of these very persons neglect their duty, by not attending and taking a part in the business that is depending, and with what difficulty they are prevailed upon to give up their amusements, and other less important avocations, for this, which, whilst they continue members, ought to be their first and principal object. This indifference about what is passing in the House, and the difficulty of procuring a numerous attendance of members, has further and much worse consequences than at first appear. The control which the independent members ought to have over the conduct of ministers is entirely lost ; and the direction and detail of the measures of government are left without attention or examination to those in whose official department they happen to be. It is, therefore, the duty of the House, especially in times of difficulty, to compel the attendance of members by frequent calls, and not to permit the indolence of some, the inattention of others, or the love of amusement in many, to leave the most important and interesting questions to be discussed and decided upon in a House not consisting of half the number of members, who ought to be present on such occasions.'''

The necessity for a caution so forcibly conveyed may be seen in the many divisions on questions of great constitutional importance, where measuring-cast majorities have prevailed. The Habeas Corpus Act was really carried by a majority of one, the teller, by a practical joke, having counted one of its supporters, a large man, as ten. The same number, one, carried the second reading of the Reform Bill. A majority of three overthrew Sir Robert Walpole. The absurd scheme of the Duke of Richmond for studding the sea-coast of England with fortifications was only rejected by the casting vote of the Speaker; the same casting vote affirmed the resolutions that produced the impeachment of Lord Melville. Upon each of these occasions there was a full House. But Romilly's useful reforms of the criminal code were rejected by less than a tenth of the full complement of members, the learned mover lamenting that a larger audience could be procured for the Highgate Inclosure Act than for the discussion of topics which affected the lives and liberties of their countrymen. Happily, the rebuke applies with a very different degree of force to the senators who succeeded, whose laudable attendance upon themes of national interest puts to shame the sloth and frivolity of preceding generations. In the struggle which preceded the resignation of Sir Robert Walpole, there was a temporary rush of members so tremendous, that it bore the paralytic and the dying into the House. "I see," said the Prince of Wales, an interested spectator, to General Churchill, "that you bring in the lame, the halt, and the blind." "Yes," retorted the general, "the lame on your side, and the blind on ours."<sup>z</sup>

<sup>z</sup> Horace Walpole's Letters.

Except when thus stimulated by the exigencies of party, members appear, with school-boy glee, to have caught at any pretext for playing truant. No House could be formed to discuss the rival claims of the old and new East India Company, the members having dispersed to see a tiger baited by dogs. The performance of Othello at some private theatricals by the fashionable Mr. Delaval, lured away the House on another important night. Burke remonstrated in vain against their adjourning for a *fête champêtre* to be given by Lady Stanley. A general toleration of Wednesday dinners, a counting out of the House on the Derby day, an abstinence from divisions, and adjournment over Saturday, marked the mezzo-termo of George the Second's reign. Horace Walpole, in his amusing letters, furnishes us with several instances. March 7, 1751. "The seventh was appointed for the Naturalization Bill, but the House adjourned to attend at Drury Lane.".. "Even when they do attend, they are so unanimous, that we are not likely to have one division this session, nay, I think, not a debate:" and again in 1759, "The Parliament has taken a quieting draught—no battles are fought in Parliament now—the House of Commons is a mere war-office, and only sits for the despatch of military business."

This *dolce far niente* system seems to have somewhat affected their chief. On the death of George II., on Saturday morning early, the lord chamberlain, the Duke of Devonshire, was summoned to London by express. "I am told," said Speaker Onslow, "that his grace travels at a prodigious rate, not less than fifty miles a day." Very prodigious indeed! In proportion as the conveyance of the modern legislator to



the scene of his labours is far more rapid and easy than with his predecessors, so much the more, when arrived in the precincts of the ancient palace of Westminster, is the term of his duty prolonged, the length of his sitting increased, and the amount of his labour multiplied. The cause of this prolongation may be traced not only to the number and importance of the topics discussed, but to the manner of discussing them, that tenuity which weakens strength—the modern all-pervading tendency to length.

The oldest parliaments were the shortest. Edward III. summoned three or four parliaments in a year.<sup>a</sup> The session then lasted a week or fortnight, and sometimes, but with murmuring, a month. The most protracted then known, 50th Edward III., continued ten weeks and four days. Down to the Hanoverian succession, the customary period for meeting appears to have been in October or November, and the prorogation in April. A few weeks before Christmas, and two or three months after, formed the average duration.<sup>b</sup> King William talked of its getting late at the beginning of April; for, in the mind and heart of that warlike king, the senator must have been a very inferior personage to the soldier, and the meeting of parliament of much less importance than the breaking up of winter-quarters. The period of departure, under George III., became prolonged to the close of spring, and now, at length, of summer. In the dog-days members begin to be resolute to pair, that they may not incur the penalty of lingering in town till the 12th of August.

Not less elongated than the sessions have been the sittings for debate. At the beginning of the seven-

<sup>a</sup> Ancient Writs.

<sup>b</sup> Journals *passim*.

teenth century important debates usually lasted from one or two in the afternoon to six or seven in the evening. The debate on the bill for suspending the Habeas Corpus Act for one whole year, in 1722, lasted till seven in the evening; the warm debate on the address, in 1727, from two to six. The debate on the excise, when "the sturdy beggars," as Sir Robert Walpole termed the petitioners, surrounded the House, appears to be one of the longest then on record—nearly twelve hours—the reply not being finished before two in the morning.<sup>c</sup> This period of prolonging and closing the discussion became, a generation later, the rule, and not the exception. For duration the debate on the property tax is the most memorable on record. It lasted eight weeks without interruption,<sup>d</sup> beginning at four or five in the afternoon, and ending at half-past three in the morning. We may adapt to this tedious strain the criticism on Sir Piercie Shafton's chant. "It was a sweet song, but somewhat of the longest!"

The pressure of continually increasing legislation renders it impossible to escape these protracted sittings. Without plunging deeply into statistics,

"that Serbonian bog,  
Where armies whole have sunk,"

we may collect a few facts, some slight numerals, to show the extraordinary increase.

The following summary of what Parliament has done in the making of laws proves that it proceeded with more than geometrical progression. The parliament of King William passed 343 public and 466 private acts.<sup>e</sup>

<sup>c</sup> Coxe's Walpole.

<sup>d</sup> Brougham's Speeches.

<sup>e</sup> Parke's History of the Court of Chancery.

Of Queen Anne, 338 public and 605 private.

George I., 377 public and 381 private.

George II., 1447 public and 1244 private.

George III., 9980 public and 5257 private.

An appalling array of figures for the nerves of the stoutest sitter. Members' hard work commenced with the American war, and Gibbon gives a glimpse of the fatigue.<sup>f</sup> "I am on the Grenvillian committee of Downton. We always sit from ten to three, after which I went into the House that day, and sat till three in the morning." A reckoning has been taken of the work done by a late House of Commons, that in one session the House sat 122 nights, between February 2nd and August 17th; the average duration of each sitting was about two hours and a half, and therefore about two thousand hours were devoted to public duty. The number of divisions was no less than 217. With strict propriety of speech may this amount of labour be termed immense. General Gascoyne, one of the members for Liverpool, stated, in proof of hard service, that he had carried 200 private bills connected with that town alone. The member for Sussex, Mr. Fuller, made a pitiable complaint, that a member soon would not be able to dine above once a-week; and Mr. Hume suggested that a bell should ring, as at a factory, to summon them away to dinner. Mr. Brougham shily insinuated the question, whether, if the bell were to ring again at six, there would be any means of compelling their return.

In an amusing pamphlet entitled 'The Division of Labour,' the overworking of this vast political machine is proved by some curious tables. "Parliament is now overwhelmed with business: twenty-five com-

<sup>f</sup> Gibbon's Memoirs.

mittees of the House may be found sitting on the same day. Thirty committees on private business have met on a single day, nineteen having been fixed to meet in one room, 1825!

“In the seven sessions between 1822 and 1828 inclusive, 2100 acts of parliament received the royal assent. The king sends these measures into the world in bevvies of 80 and even 100 at a time. The number of public petitions printed has averaged 1400 in the session. There are piles upon piles of reports.

“From the colonial department alone, in 1825, there were laid on the table papers amounting to 5000 pages. The printed papers of a session, entirely exclusive of the bills printed, the votes of the two Houses, and journals, exceed twenty-five full-sized and closely printed folio volumes. A parliamentary committee is a synonyme for anxieties or solicitude superfluously awakened, for toil fruitlessly incurred, for expectations we are almost tempted to say wantonly blasted. The parliamentary session is one continued legislative race. One hundred acts are called into vitality at one dash of the pen: no hour of the day is thought too late for advancing a bill, or too early. The quality is as bad as the quantity. The products of its deliberative wisdom, of its legislative skill, are turned out in a very unworkmanlike and defective manner. Acts are designated as futile, trumpery, unintelligible, so abounding in errors of grammar even, that the very printer puts *sic* in the margin. The highest legal authorities speak of them as acts ill penned, inadequate to their purpose, so loosely worded that no proceedings could be instituted upon them—passed in ignorance of the practice they tried to improve.



“Any attempt of the unlearned public to understand the statutes is like an endeavour to interpret a Runic inscription. We have pitiful legislation about muffin plates, twigs for hoops, newsmen’s horns. There are faggot acts, binding together matters between which there exists not one particle of affinity or relation. Of the statute under which various of the public theatres, Vauxhall, and other places of entertainment, are annually licensed, the commencement is, ‘Whereas the advertising a reward with no questions asked, for the return of things lost or stolen, is one great cause and encouragement of robberies, be it enacted, &c.’ This *pot-pourri* mode of legislating is not the exclusive characteristic of past times. Many acts are even now passed in one session only to be repealed in the next. To alter, to amend, and to explain, appear to be the terms in which our legislators most delight.”<sup>g</sup>

Their handiwork is branded with these and similar blunders, from the carelessness and haste which overtasked artificers display in dismissing their labours; and the precipitancy with which, at the close of a session, or the approach of midnight, so much business is professed to be done. When a dozen bills or more are dispatched, with amendments, at one or two in the morning, their framers would be more than men, if they did not sometimes nod over the papers, if a large mixture of poppy were not infused into the new clauses, if their lucubrations did not savour of somnolency and sleep.

It is curious to trace the gradually progressive increase of late hours. “The House,” says Clarendon,<sup>h</sup>

<sup>g</sup> Wicken’s Argument for Division of Labour.

<sup>h</sup> History of the Rebellion.

“met always at eight o’clock and rose at twelve, which were the old parliamentary hours, that the committees, upon whom the great burden of business lay, might have the afternoon for their preparation and despatch.” To the convenience of all members engaged in active employment, this method of proceeding has been inverted, still reserving to committees a chief part of the burden. In the last session of Queen Elizabeth, the Speaker delivered a message in terms the most remote possible from parliamentary language. “I am to deliver her majesty’s commands that, for the better and more speedy despatch of causes, we should sit in the afternoon.”<sup>1</sup> A motion being made that bills might then only be read the first and second time, at which stage debate was not then allowed, Sir Edward Hobby expressed his approbation “as I ever held this for a rule ‘*mane consilium, sero convivium*.’” This *mane consilium*, on great occasions, to judge from the first volumes of the Journals and old orders of the House, took place at cock-crowing.<sup>1</sup> “March 26, 1604. Having obtained permission of her majesty to attend at eight, the Commons previously meet at six, to treat on what shall be delivered touching the reasons of their proceedings.” “May 31, 1614. Ordered, that this House shall sit every day at seven o’clock in the morning, and begin to read bills for the first time at ten.” The Journals record, that, on Sunday, August 8, 1641, at six o’clock A.M., the Commons go down to St. Margaret’s and hear prayers and a sermon, returning to the House at nine. This enforced breach of the Sunday was occasioned, however, by the eagerness of members to prevent the king’s journey to Scotland, and a minute was made that it should not be considered a precedent. A very

<sup>1</sup> Townsend’s Proceedings.

<sup>1</sup> Journals, vol. iv.

good order was adopted by the Long Parliament, April 19, 1642, "That whosoever shall not be here at prayers every morning at eight o'clock, shall pay one shilling to the poor."<sup>k</sup>

Meeting thus early, like the Courts of Common Law, first at seven and eight, and afterwards at nine, they were very punctual in their adjournments at noon, and deprecated late hours. When James I. published a memorial of his reasons for erasing the protestation of the Commons, he mentioned this as an especial grievance, that the Commons brought the protestation concerning their liberties into the House at six o'clock at night, by candle-light, a thing unprecedented. Their twelve o'clock dinners formed a strong motive to members for rising punctually, and, when the hour was exceeded, Major-General Disbrowe foretold the consequence: "We shall grow angry at one." In his prandial wish for an early adjournment, the soldier was seconded by men of the robe. "I move," said Serjeant Wylde, "against sitting in the afternoon. This council is a grave council, and sober, and ought not to do things in the dark."<sup>1</sup> In accordance with these admonitions, it was ordered, May 31, 1659, "that the House do rise every day at 12 o'clock, and that no new motion be made after 12, but that Mr. Speaker is hereby enjoined to rise."

The Commonwealth appear to have entertained strong objections to all debates by artificial light. Sir A. Haslerigg said he never knew good come of candles. Sir William Widdrington brought in two candles from the clerk, against the direction of the House, and was sent to the Tower next morning. Having sat till seven, Sir H. Vane complained, "We

<sup>k</sup> Journals, vol. v.

<sup>1</sup> Burton's Diary.

are not able to hold out, sitting thus in the night." Sir Harry Ingoldsby exclaimed "he might well be spared." Some excepted against that expression, but it was late.<sup>m</sup>

The inconvenience of their day-sittings compelling a thin attendance, had begun to be generally felt. In the lordly language of a Parliament which considered itself supreme, Captain Hassell moved that the judges be *required* to sit at seven and rise at nine, that all their members might attend. Mr. Bond suggested extending the hour of the court sitting till ten. "If you take away the counsel wholly, you will undo many a poor man who has retained them from the beginning in their causes." Mr. Weaver made a reluctant admission of the necessity for having counsel: "I would rather have you require the counsel to attend here, or stick wholly to their practice, and let others come in their places that will attend. We have little of their help, either here, or below at committees, though they are very useful, I confess, if they would apply themselves to it." The motion dropped through. Morning sittings have been found incompatible with the attendance not only of counsel, but of merchants and official personages, the most valuable of whom are at such hours necessarily absent.

After the Restoration, the House prolonged their sittings till two in the afternoon, the fashionable dinner hour, and sometimes resumed in the evening, to the sad annoyance of sauntering, pleasure-seeking members who preferred the theatre and Mall. Marvell informs his constituents in 1675, "We sat all day yesterday till six, and to-day till seven, so that you cannot expect much news from me, having so small leisure, and

<sup>m</sup> Burton's Diary.



the longest debates ending in the smallest results." It grew from bad to worse. In 1677 he writes to inform them of his enforced keeping Lent in their service. "The House having sat to-day without interruption till almost nine at night, I therefore write fasting."

In Queen Anne's reign, evening hours encroached. "This morning," we read in the Atterbury Correspondence, "Bromley moved for leave to bring in a bill against occasional conformity. It was a long and warm debate, the House not rising till five."

On the emergency of the South Sea Company, when a committee was appointed to investigate what could be done for the relief of the deluded shareholders, they set an example of hard, dogged, work, worthy of later times. "I informed the House," says Brodrick the chairman,<sup>n</sup> "that, without intermission of a day, Sundays and 30th January excepted, the committee had sat from nine in the morning till eleven at night" [by relays of members doubtless]. This tendency to late hours attracted the notice of Steele, and occasioned a lively essay in the Tattler, with a motto that has now all the force of paradox, "*minimâ contentos nocte Britannos*," in which he observes, "If you would see the innovations that have been made among us, you should look into the house of call, where they still dine at eleven, and sup at six, which were doubtless the hours of the whole nation, at the time when those places were founded. But at present the courts of justice are scarce opened in Westminster Hall at the times when William Rufus used to go to dinner in it. All business is driven forward. The landmarks of our fathers, if I may so call them, are removed and planted further up into the day, inso-

<sup>n</sup> Brodrick's Letters to Lord Myddleton.

much that I am afraid our clergy will be obliged, if they expect full congregations, not to look any more upon ten o'clock in the morning as a canonical hour. In my memory, the dinner has crept by degrees from twelve o'clock to three, and where it will fix nobody knows!" A bold guesser at futurity might now fix upon a liberal nine.

How fast the habits of keeping early hours continued to degenerate after the Revolution, we learn from the complaint and advice of Burnet. That well-meaning whig bishop, among other useful hints, at the close of his Memoirs, says, "One thing more I presume to suggest, which is, that we may have fewer and shorter sessions of parliament: the staying late in town both wastes and corrupts the morals of members; their beginning so late in the day to enter upon business is one great occasion of long sessions. They are seldom met till about twelve o'clock; and, except on a day in which some great points are to be discussed, on which the parties divide, they grow disposed to rise after two or three hours' sitting. The authority of the prince must be interposed to make them return to the old hours of eight or nine; and, if from that time they sat till two, a great deal of business might be dispatched in a short session."

Speaker Onslow adds, at the end of another generation,<sup>o</sup> "This is shamefully grown of late, even to two of the clock. I have done all in my power to prevent it, and it has been one of the griefs and burdens of my life. It has innumerable inconveniences attending it. The Prince of Wales that now is (George the Third) has mentioned it to me several times with concern, and did it again this very day,

<sup>o</sup> Notes to Burnet.

October 7th, 1759 ; and it gives me hopes, that in King William's time, those of his ministers who had the care of the government business in the House of Commons were dismissed by him to be there by eleven o'clock. But it is not the fault of the present king : his hours are early. It is the bad practice of the higher offices, and the members fall into it, as suiting their late hours of pleasure, exercise, or other private avocations. The modern practice too of long adjournments at Christmas and Easter, and the almost constant adjournment over Saturdays, are a great delay of business and of the sessions. 'This last was begun by Sir Robert Walpole for the sake of his hunting, and was then much complained of, but now every body is for it.'

Greatly would Onslow's spirit have groaned over the multiplication and intensity of the evils which he lamented, and at the failure of his admonition. Saturday is still the allotted holiday ; the winter and spring recess are become inveterate ; and, notwithstanding the good example of George III., so little had his early to bed and early to rise habits corrected the mischief, that his wonted hour of rest became the very period at which his cabinet ministers began to think of taking part in the debate. So early as in the time of Onslow's successor, four o'clock became the hour for the Speaker's taking the chair. The presentation of petitions, discussion on private bills, and notices of motions, filled up the space till five, when the grand debate was in general heralded by a speech of two or three hours, and a division called for at any chance hour after, but never before, midnight.

The division on the address in 1783 did not

take place till half-past seven. In the same year, the motion for the Speaker leaving the chair on Fox's India Bill was put to the vote at half-past four in the morning. During the Westminster scrutiny, the House sat sometimes till six in the morning. Pitt, speaking on the slave trade, introduced his beautiful quotation, from the sun just then bursting upon the wearied but still attentive audience. Wraxall passed the Horse-Guards at half-past eight in a summer morning, after an important division. Working men might indulge in sleep, and enjoy a good night's rest, before taking part in the debate, or dividing. It is recorded of Sir Samuel Romilly,<sup>p</sup> that he would not unfrequently go to bed at his usual time, and, rising next morning somewhat earlier than usual, would go down to be present at the division.

This complete inversion of night into day received a useful check at the passing of the Reform Bill, since which important epoch for the internal economy of the House, an adjournment at the midnight hour has become habitual, and proved most consonant to the exigencies of business and to the habits of society. It were Utopian to wish an earlier hour, unless members could be induced not to speak so often, and so long.

<sup>p</sup> Romilly's Memoirs.



## CHAPTER XIII.

THE number of members who join in the discussion of popular topics has been multiplied by the increase of knowledge and the amount of information which so many can impart, by the generous rivalries of a noble ambition, by the consideration attached to success in Parliament, and that instant communication of fame which the daily publication of the debates brings home. "Formerly," said Sir Robert Inglis,<sup>a</sup> "very few members were wont to address the House; now the speaking members are probably not less than four hundred." Of the sister-country, not four members out of the hundred are wholly silent.

The compulsion to speak for credit's sake has been well expressed by Lord Dudley.<sup>b</sup> "If, indeed, nothing were asked or expected of me, if I could hear the debate, give my vote, and then depart in peace, quite sure that my silence from the first to the last day of the session would be completely unnoticed by friend or foe, the condition of a *pedarius* senator might not be altogether disagreeable to me. It affords amusement, and keeps one in good company. But as, unfortunately, I have somehow given rise to ex-

<sup>a</sup> Speech on the Reform Bill.    <sup>b</sup> Letters to the Bishop of Llandaff.

pectations which I am unable to fulfil, I am tormented every day, not only by mortifying reflections of my own, but by the exhortations of friends, who mistake inability for laziness, and by the taunts and sneers of those who, better acquainted with the real nature of the case, choose to disguise their malice under the mask of compliment to me ; therefore, leaving Parliament would be to escape from a very painful situation."

The necessity for complying with the exactions of constituencies forms another powerful motive for speech, and solves the riddle of twenty orators who cannot speak with any effect striving to catch the Speaker's eye in the midst of a debate. A fond, popular constituency, credulous enough to believe that the hero of the hustings must be popular with the House, are surprised and displeased at a silence which they can attribute only to carelessness or neglect ; that he may preserve their favour, the popular member is constrained to struggle for notoriety. He must appear to speak and to be listened to ;—his name must be seen in print. There would be serious mischief in this necessity to speak, were there not strong counter-checks. Their proneness to garrulity is in some degree corrected by the extreme sensitiveness to ridicule, and fastidious shrinking from the risk of failure, to which our legislators, from habits of over-refinement, are peculiarly subject. Single-speech Hamilton sat in Parliament a year before he could venture on the delivery of that antithetical oration which forms his sole, doubtful, title to fame. Though afterwards worshipped as "Sir Oracle," no further response could be wheedled from that cold and cautious shrine. "Wait to hear Hare," was the reply of

Fox, when congratulated on the effect of some splendid speech. His old schoolfellow, the rhetorician of Eton, expected to surpass Fox, took his seat in silence, to remain a sinner for life. A still greater name at Eton, the darling of so many candidates for fame, Bobus Smith, tried, faltered, and was mute for the future—hopelessly mute. The struggles between inclination and nervousness, the “dare not waiting on I would,” are almost affectingly revealed in the diary of the historian of the decline of the Roman empire. Gibbon writes at first: “If my confidence was equal to my eloquence, and my eloquence to my knowledge, perhaps I might make no very intolerable speaker. At all events, I fancy I shall try to expose myself.

“Semper ego auditor tantum, nunquamne reponam.”

A month afterwards he writes, “I am not according to your charitable wishes, because I have not attempted; there was an inundation of speakers—young speakers in every sense of the word—that neither Lord George Germaine nor myself could find room for a single word.” Two months passed away, and he adds: “As yet I have been mute. In the course of our American affairs I have sometimes had a wish to speak, but though I felt tolerably prepared as to the matter, I dreaded exposing myself in the manner, and remained in my seat, safe, but inglorious; upon the whole, though I still believe I shall try, I doubt whether nature—not that in some instances I am ungrateful—has given me the talents of an orator, and I feel that I came into Parliament much too late to exert them.”

He was then thirty-seven, and soon afterwards

“Gibbon’s Memoirs.

gave in. In the mortification of invincible shyness the candid autobiographer must have had many sympathizers. "Isaac Hawkins Browne," said Dr. Johnson to Boswell, "one of the first wits of this country, got into Parliament, and never opened his mouth." "For my own part," remarks Boswell, "I think it is more disgraceful never to try to speak, than to try and fail; as it is more disgraceful not to fight, than to fight and be beaten." Sir Egerton Brydges records the many nights he sat prepared to speak, but unable from timidity, expecting the moment with aching temples and palpitating heart. What speaker would fail to commiserate the too sensitive baronet,—for he can scarcely, on some nervous night, have escaped the same feeling,—what hearer would not in secret wish that his sensibility were more contagious? The modern habit of talking Alexandrines, of speaking by the hour, cannot but now and then compel a wish in the most charitable hearer that the orator may break down. The description of a voluminous work seems justly applicable to an interminable oration: "a great speech, a great evil."

The wearisomeness of orations "long drawn out" was quadrupled by the trial of Warren Hastings, the leading managers of which measured time with an eastern prodigality, days being substituted for hours, and weeks for days, in argument. Burke occupied nine days in reply, Dallas five. The flood-gates being once broken down, prolixity rushed in, and swept away all observance of the good old rule:<sup>d</sup> "If any one speak too long and speak within the matter, he may not be cut off; but if he be long and out of the matter, then may the Speaker gently admonish him of the short-

<sup>d</sup> The Orders and Privileges of the Commons.



ness of the time or the business of the House, and pray him to make as short as he may." Mr. Hatsell mentions a speech of the great Lord Chatham of three hours and forty minutes. "This," he adds, "at the time of the first publication of this volume entitled me to call his speech very long. The later practice, contrary to the recommendation of Cicero, '*Utmodo ne sit infinitus, nam brevitâs in sententiâ senatoris magna laus est,*' has rendered this epithet improper."

The evil is certainly of remote antiquity, and has quasi classical authority. Pliny mentions in his letters, that he had spoken before the Roman senate for seven hours, with great applause and attention—a memorable instance of Roman virtue! The Speaker of our less patient senate should borrow the fashion of the Lords of Session in Scotland, who sat with an hour-glass before them, always dropping its sands in the presence of the pleader.<sup>e</sup> Except on such occasions of national emergency, occurring half-a-dozen times in a century, as those which drew from Pym a speech of two hours on the Rebellion, and from Prynne a plea for the king's life and a pacification, of five hours' continuance; except on these great and rare occasions, where the orator is worthy of the theme, and a crowded House with their spirit-stirring exclamations of "hear, hear!" compel him to proceed, that humane order which allows a long-sitting sufferer to require that the House be counted, should be rigidly observed. An interminable orator, haranguing empty benches, whispered to a friend, "I am speaking to posterity." "If you go on at this rate," replied his friend, "you will see your audience before you."<sup>f</sup> When Hartley, the most prosaic of orators,

<sup>e</sup> Barrington on the Statutes.    <sup>f</sup> Sir J. Sinclair.

had all but cleared the House, and wished some clause in the Riot Act to be read, "You have read it already," exclaimed Burke, "the mob is dispersed!" It is recorded of this speaker against time, worthy of a statue in the senate at Washington, that Mr. Jenkinson left the House as he rose to speak, rode to Wimbledon, dined, rode back, and found the unconscionable talker still prosing on to a select and patient few.\*

It would appear from a calculation founded upon data furnished by Coxe and Horace Walpole, that the leading speakers at the beginning of the last century seldom occupied, much less exceeded, an hour in debate. With the fierce opposition to Lord North commenced the custom of two or three leading orators occupying the House for a whole night, each taking at least three hours to his own share. Horace Walpole opened the debate as early as 1738, upon the Spanish Convention, in a speech of two hours and a half, but he had many documents to read and refer to, which his hearers mercifully considered. His brother spoke for nearly three hours when introducing the Excise Bill. The climax of long speaking was certainly attained by Mr. Brougham, in his speech of more than six hours upon the improvement of the law; but the magnitude of the evil would not appal, if those only were permitted to speak so long who could speak as well.

As some preservative against undue prolixity, a few old-fashioned standing orders were adopted by our forefathers, that no member should read a written speech, or speak sitting. Grey informs us how vigorously the first rule was observed. "Mr. Mallet read a long speech. Sir Charles Harbord takes him down

\* Croly's George IV.

to order. The precedent of reading a speech is dangerous. The attorney, now lord keeper, reprehended him once only, for making use of heads in a paper : ‘ Pray never let speeches be read in parliament.’ ” Sir William Lewis said : “ The best reason he has yet heard for his going on, is, that he has almost done ; it may be without doors ill-reported not to let him make an end ; though he is not for reading entire speeches, yet short notes are always commendable ; he may go on for this time, but hopes you will not admit it for the future.”

The propriety of the prohibition is self-apparent : the punishment of those assemblies which neglect it, most exemplary. The somnolent effect of written and prepared oratory has been fully exposed in the parliament of a neighbouring kingdom. The Life of Mirabeau discloses the manner in which the important question of the veto was discussed. A list of speakers for and against was made out ; each appeared manuscript in hand, and read a dissertation unconnected with anything that had been urged by preceding orators. “ I can imagine nothing more disgustingly tedious than this species of academic lecture, the reading of those heavy pamphlets, teeming with repetitions, and devoid of any continued chain of argument. The form of a debate in which each speaks either to reply or attack, stimulates all the faculties, and keeps up the attention ; but those prepared speeches refuted objections which had never been urged, and did not refute those which had. The proceedings were always in the same stage ; each speaker opened the question as if no other had preceded him, and nothing but the fanaticism attendant upon public events could have resisted the mortal *ennui* of those sittings.” Each

sharpshooter in debate goes through the same elaborate process of loading his piece, and then fires it off in the air. The most brilliant oration is merely like the arrow of Alcestis pointed at the clouds, and lost in empty space, but leaving a long track of light in the path it had cleft.

Some other excellent rules for keeping debate within reasonable limit, and restraining a too colloquial character, were established early. "April 1621. Sir Francis Seymour, offering to reply, was interrupted by Mr. Speaker, because against the order of the House to speak twice in one day, which is for avoiding replies and spending of time, and to avoid heat." Sir Stephen Lushington allowed to sit while speaking: but the instances rare. "To this custom of speaking twice, under pretence of informing the House of a fact, or of explaining where he has been misunderstood, more than to any other cause, it is, that the House is kept sitting in debate much longer than it formerly used to be, since, even in my memory, Mr. Onslow kept this order tolerably strict."<sup>g</sup>

Formerly in committees it was usual for members to speak either sitting or standing; for Sir Walter Raleigh says, "Being on a committee, I may speak either sitting or standing;" and Sir Robert Cecil immediately adds, "Because it is an argument of more reverence, I choose to speak standing."

In later times, and with perfect propriety, members have never been allowed to retain their seats when speaking, except from infirmity. Mr. Pitt (Lord Chatham) was permitted to sit when he made his very long speech against the peace of 1763, and the Lord Mayor Crosby, before he was sent to the

<sup>g</sup> Hatsell's Precedents.



Tower; both on account of indisposition. With this exception, no chair-sitting should be tolerated, as there is no limit to some organs of speech, except physical fatigue.

A very useful statute was introduced soon after the Revolution, to restrict both the number and ardour of speakers—an act of parliament, 7th William III., which renders null and void the election of all members who are not of full age. The members summoned to the Convention must have been of mature age, eight years having elapsed since the last of Charles the Second's parliaments, and none being convened but those who had sat in the parliament of that and the preceding reign. As elders of the people, in the fulness of experience, they came within the terms of a proclamation for summoning an assembly of ancients, issued in the time of the Saxon heptarchy:<sup>h</sup>—"I, Ina, king of the West Saxons, have caused all my fatherhood, aldermen (elder-men), and wisest counsellors, with the godly men of my kingdom, to consult of weighty matters," &c. A similar discretion had been much desiderated in the choice of senators to our early parliaments, though earnestly inculcated by the first Stuarts, who smarted under the infliction of rash young spirits and giddy tongues. James, in his proclamation, cautioned parliament of the ill effects, if the House should be supplied with young and inexperienced men that are not ripe and mature for so grave a council.<sup>i</sup> His son repeated the caution in still stronger terms; and, though the motives of both monarchs are liable to comment and misconstruction, as adverse to that freedom of speech

<sup>h</sup> Quoted in Hallam's *Middle Ages*.

<sup>i</sup> *Parliamentary History*, vol. ii.

in which the ardent temperament of youth would indulge most freely, the scandal and abuse to which the admission of mere boys had given occasion, justifies the rebuke. Dr. Welwood<sup>k</sup> mentions with commendation a speech of Recorder Martin, in the 10th year of King James, when there was an account taken of forty gentlemen not above twenty years of age, and some not exceeding sixteen, which caused the grave old lawyer to say, that "it was the ancient custom for old men to make laws for young men; but that now he saw the case altered, and that there were children elected into the great council of the nation, which came to invade and invert nature, and to enact laws to govern their fathers." His remonstrance was adopted by Mr. Weston, who said, that "their meeting was pestered with the admission of so many young men, and that it was not fit they should make laws for the kingdom, who were not in their own persons liable to the law, who could not themselves be bound by contracts except for necessities." In 1623, Sir Edward Coke again noticed the evil: "Many under the age of twenty-one sit here by connivance, but, if questioned, would be put out." If this were the law of parliament, it was in practice constantly evaded, highly to the displeasure of puritan elders, who muttered that "parliament was not a place to enter whelps in."<sup>1</sup>

No such sweet music was, however, made by any stern republican—no such elegant discourse by any grave senior—as the plaudits of the House elicited from the tuneful Waller, not less excellent poet than orator, who sat before he was seventeen; and from the first Lord Shaftesbury, who could boast of being

<sup>k</sup> Welwood's Memoirs.      <sup>1</sup> Prynn's Tract.

able to subdue his audience at nineteen years of age. Some excuse might be made by such early blossoms for even unripe fruit. Under the Commonwealth, Lord Falkland gave striking proof of the petulance of youth. In 1658, some opposed his admission—he was barely of legal age—urging that he had not sown his wild oats. He retorted, “If I have not, I may sow them in this House, where there are plenty of geese to pick them up.” In the same parliament, greater fatuity was exhibited than youth could excuse: “A very young man stood up, and told a story of Cain and Abel, and made a speech nobody knew to what purpose.”<sup>m</sup> This very young man, if he would apply scripture illustrations, might have learned to “tarry at Jericho till his beard was grown.”

An evil, that times of gravity could not repress, flourished in rank exuberance under Charles II. In Marvell’s account of the Pensioner Parliament, under the head Queenborough, this malicious wag says: “James Herbert, Esq. is but fifteen years old, but son-in-law to the lord-treasurer, and therefore of age to dispose of the people’s own money.” Lord Torrington is reported by the more grave chronicler, Anchitell Grey, to have been but fourteen when he took a part in the debate. On his father’s death, the boy-duke was no longer permitted to sit. “Yesterday was wholly taken up in a debate concerning ordering a new writ for Devonshire, in the place of the young Duke of Albemarle, and being controverted whether he, though a peer, being not of age to sit in the Lords’ House, did not yet retain the right which he had of sitting during his father’s life-time; but the house ordered at last a new writ to issue in his place.”<sup>n</sup> To exclude

<sup>m</sup> Burton’s Diary.

<sup>n</sup> Marvell’s Letters.

such "younkers," as the Puritans contemptuously termed them, to prevent all inexperienced novices in future from intruding themselves into the seats of the elders, the aged Prynne, learned in all the law of Parliament, and indignant at being thrust aside to make room for grandchildren, levelled a heavy pamphlet against the abuse, entitled, "Minors no Senators," and armed with a verse of Scripture :—" For, behold, the Lord of Hosts doth take away from Jerusalem the stay and the staff, the prudent man and the ancient, the honourable man, and the counsellor, and the eloquent orator, and I will give children to be their princes, and babes shall rule over them." The grim lawyer proved incontrovertibly that minors, in the eye of the law, are deemed incapable to manage their own estates ; that all their grants and releases are void, or voidable, when they attain full age ; that the king is not bound to send his writ of summons to a peer under age ; that he cannot be a minister or member of Convocation before twenty-four, or even a common council-man till twenty-one : and he argues bitterly, that babes in law ought not to be elders of our realm. " Every senator ought to be indued with these qualifications, which our infants usually want : First, with deep, solid wisdom and gravity ; secondly, sound judgment ; thirdly, mature experience ; fourthly, impartial justice ! The civil and canon law repute the age of discretion to be twenty-five. Solomon says, ' childhood and youth are vanity : ' I am sure they are so in our parliament ! "

In his anxiety lest we should have " *parliamentum puerorum, senatum infantium*," lest these juvenile cyphers should keep out figures of weight, the author attempts to prove their incapacity by a sub-



the argument derived from the acknowledged law of Parliament. "By the ancient law and custom of Parliament, every member who absents himself without just excuse shall be amerced and punished by imprisonment, or the like ; but our law-books all resolve that an infant cannot be fined, amerced, or imprisoned for any laches, absence, or negligence, because he is not of full discretion."

These elaborate arguments failed of producing any effect for a season. The Parliament of Charles II. continued to abound with minors, careless, lavish, and debauched, the legality of whose elections was admitted, even after the Revolution. In December, 1690, on the trial of a controverted election, Wm. Trenchard, Esq. admitted by his counsel that he was under age, but, notwithstanding, on a division, was declared duly elected. But the reasons for their exclusion had too much cogency not to prevail in time. A statute was passed in 1695,<sup>o</sup> which made void the election of any person who was not twenty-one years of age. Even after the statute, persons of quality were smuggled into Parliament, through some close borough, before the statutory age. Lord Chesterfield tells his son, "I spoke in Parliament the first month I was in it, and a month before I was of age, and, from the day I was elected to the day that I spoke, *I thought nor dreamed of nothing* but speaking." Lord Chesterfield appears to have studied the graces more than grammar. His speech, notwithstanding the month's preparation, betrayed all the rashness of youth. Declaiming against the Oxford ministry,<sup>p</sup> he declared that "he never wished to spill the blood of any of his countrymen, much less the blood of any nobleman,

<sup>o</sup> 7 Will. 3, c. 25.

<sup>p</sup> Maty's Life of Lord Chesterfield.

[the distinction is characteristic] but that he was persuaded the safety of his country required that examples should be made of those who had betrayed it in so infamous a manner." This violence was directed against the Duke of Ormond, and was carried so far that he acknowledged that, if he had not been so young a member, he should have been reprimanded. As soon as he had done speaking, one of the opposite party took him aside, and, having complimented him upon his *coup d'essai*, added that he was exactly acquainted with the day of his birth, and could prove that when he was chosen a member he was not of age, nor was yet, but that he would take no advantage of this unless his friend were pushed, in which case, if he offered to vote, he would immediately acquaint the House with it. Lord Stanhope, who knew the consequences of this discovery—a penalty of £500—made no reply, but making a low bow, quitted the House directly, and went to Paris.

A similar connivance is said to have been indulged to Fox, who was ushered into the temple of his glory at nineteen. His forerunners in the same arena, St. John, Pulteney, Wyndham, Charles Townshend,—his competitors for fame, Pitt, Sheridan, Grey,—his successors in the course, Canning, Brougham, Peel, all trod the stage of their triumphs in the first flush of manhood. With the exception of lawyers, to whom the principle of training in the House does not apply, the mighty Burke is the only instance of an orator who did not gain a seat till thirty-six.<sup>a</sup> He always lamented his tardy entrance, and even he might have avoided several displeasing mannerisms, and have adapted himself with more facility and grace to the

<sup>a</sup> Prior's Life of Burke.

changeable humours and capricious moods of his audience, had he been *caught* young.

When Mr. Pitt suggested to Lord Cornwallis the expediency of his entering Parliament, the veteran of fifty wisely declined to risk his laurels. "The maxim," he writes, "*orator fit*, which has produced so much bad speaking and so much ennui in this world, may be true in some instances, but he is not to be made '*ex quovis ligno*,' and I should doubt whether the timber ought to undergo a seasoning of above half a century." Even at a still more advanced age, Dr. Johnson was willing to have hazarded the danger, but he had been trained to daily dialectics, and would have entered the House a ready debater, flushed with colloquial triumphs. The great Chatham, father of the boy-premier,—himself reproached with his youth, in a speech to which old Horace Walpole furnished the hint, and Dr. Johnson the language,—was only just of age when he proved himself that terrible cornet of horse whom the crafty prime minister tried in vain to muzzle.

This blending together of the young, and tried veteran—the measuring of swords between the youthful Troilus and the experienced Nestor of debate—has been attended with the happiest results to the oratory of St. Stephen's, and has given it a living and energetic character. It is the province of the young to deal in the hardy assertion, the caustic repartee, the biting, scoffing, sarcasm, which are so popular with that amusement-loving and excitable assembly. There is generally observable, among those who enter Parliament at mature age, a want of that warmth and animation, that bold, declamatory vehemence, which distinguish the senatorial from the forensic orator. Their speeches are generally shrewd and clear, rather

than brilliant or imaginative; addressed to the understanding, and not to the fancy; impressive, but not sufficiently energetic. They do not, in general, display practised skill of fence, or dexterity in the use of the weapon, nor have sufficiently the ardent spirit of a gladiator to give entire satisfaction in that classical arena, for they draw no blood. Yet are their calm experience and sententious wisdom often required to keep in check the immature rashness of thought, and unguarded expressions of those juvenile statesmen, whom the civil law proclaims to be still under age. It is a rare thing in youth and with a cultivated and argumentative mind, to have strong and conclusive opinions,<sup>r</sup> though it is a common thing to express opinions strongly; and young and oratorical men will often enunciate as intimate convictions, and with great zeal and fervour, opinions which are in reality as lightly holden by them as they have been prematurely formed. Still what a fearlessness, and freshness, and ardour do they give to the gentle flow of deliberation, in which the fathers of the House,—Sir Harbottle Grimston haranguing at seventy-six, or Maynard at eighty, or the many sexagenarian debaters,—would otherwise steal along. It is like the meeting of the two rivers the Saone and the Rhone (to adopt Lord Chatham's metaphor), the junction of the rapid and turbid current with the calm and placid stream, and on whose strong, but not too impetuous, current, when united, float buoyant and free the saliency of quick perception, and the calmness of deliberative wisdom.

A more just limit seems to have been fixed by our legislators—a more happy medium attained between excess of encouragement to juvenile loquacity and

<sup>r</sup> Taylor's Statesman,



harsh prohibition, than was achieved by the senates of ancient or modern times. The councils of Athens and Sparta were composed of greybeards of fifty; at Rome, with better discretion, the statutable age for admission is said to have been thirty-five. Our volatile neighbours appear to have erred in deference to classical authority, no deputy being introduced to the Chamber before forty. In America, the President of the Congress must be thirty-five years of age, every senator must be thirty, every member of the House of Representatives twenty-five. The same period, twenty-five years complete, was the statutable age at which every Venetian noble had a right to take his seat at the great council. But the names of those who had passed the age of twenty were annually put into an urn, and four-fifths elected by lot. "Were spinsters allowed to vote," said Cobbett, "and to vote by ballot, what a mass of youth and beauty would St. Stephen's exhibit."<sup>s</sup> Even as it is, the majority of members have been often estimated as under thirty-five years of age.<sup>t</sup>

Against too large an influx of young and handsome adventurers, an excellent corrective was provided by the statute of Anne, which required a qualification of £300 a-year from every member for a borough, and of £600 a-year from every representative of a county. This act did much more than effect a 'foolish and expensive lie on parchment:'<sup>u</sup> it compelled the possession, or reputed possession, of that wealth and consideration, without which public respect in England can never permanently attach to a public body. Requiring no money qualification from the sons of peers, from members for the universities, from the Scottish

<sup>s</sup> Cobbett's Register.

<sup>t</sup> Curwen's Travels in England.

<sup>u</sup> Rev. Sydney Smith.

members, and not interfering with several boroughs under patrician influence, it left some entrance free to rank, literature, and talent, but, for the rest of the constituency, barred the door against those who could not present a rent-roll, or obtain the advantage of friends and connexions to furnish it when necessary. It excluded the mere adventurer, the political demagogue, with no station in society, and no appurtenance but his front and his tongue; it compelled the representative to have a stake in the country besides that which was stolen from the public hedge.\*

Casuists have well contended, that no national legislature can ever be respectable or secure, unless it contain within itself a great proportion of those who form the natural aristocracy of the country, and are able, as individuals, to influence the conduct and opinions of the greater part of its inhabitants. "Unless the power, weight, and authority of the assembly be really made up of the power, and weight, and authority of the individuals who compose it, the fictitious dignity they may derive from their situation can never be of long endurance."† The assemblies that met, under the name of the Long Parliament, during the Protectorate,—purged by the Independents of Maynard, and St. John, and Prynne, and other leading lawyers and statesmen, enjoyed all the form of power that had belonged to their predecessors; but, as they no longer contained those individuals who were able to sway and influence the opinion of the body of the people, they became a by-word and a hissing, and sunk under an epithet as ludicrous as it was low. In England, the most certain and permanent influence is that of rank and riches, and these are the qualifications accordingly,

\* Speech of Horne Tooke.

† Edinburgh Review.

which return the greatest number of members. Men submit to be governed by the united will of those to whose will, as individuals, the greater part have been previously accustomed to submit themselves ; and an act of Parliament is revered and obeyed, not because the people are impressed with a constitutional veneration for an institution called a Parliament, but because it has been passed by the authority of those who are recognised as their natural superiors, and by whose influence, as individuals, the same measures might have been enforced over the greater part of the kingdom.<sup>y</sup>

Scarcely any new power is acquired therefore by the continuance of those persons in the legislature ; they carry each their share of influence and authority into the senate along with them ; and it is by adding the items together that the influence and authority of the senate itself is made up. The real power of every state is vested in its effective aristocracy, and that state appears the happiest in which the aristocracy is most numerous and diversified as to the sources of its influence ; that government the most suitable, secure, and beneficial, which is exercised most directly by the moderation of this aristocracy. In a country where rank, wealth, and office constitute the chief sources of influence over individuals, it is proper that rank, wealth, and office should comprehend the greatest number of its legislators.

In proposing a landed qualification, the tories adopted a notion, as popular with the cavaliers of Charles I. as familiar to the statesmen who ruled the counsels of his son. It was the boast of the landed gentry who perilled life and fortune for their

sovereign in the great rebellion, that the revenues of one troop of the guards at Edgehill was at least equal to those of all the members, who, at the commencement of the war, voted in the House.<sup>z</sup> With a similar feeling of pride and pleasure, it is mentioned by a royalist, in the *Life of Monk*, that, in the first rank of the general's life guards, commanded by Sir Philip Howard, there rode such as had £100,000 per annum of inheritance among them.<sup>a</sup>

When Sir William Temple proposed to the king the scheme of a new privy council,<sup>b</sup> he dwelt with delight on the riches of the peers and commoners whose names were suggested, and vaunted that their revenues in land and offices would amount to about £300,000 a-year, whereas those of the House of Commons were seldom found to have exceeded £400,000.

If this calculation be correct, the income of the late Mr. Arkwright was greater than that of the whole Pensioner Parliament, so enormous in England has been the accumulation of wealth. With the same indiscriminate admiration of riches, Mr. Sidney<sup>c</sup> dilates on the excellent choice which Charles II. had made of new ministers in Lord Essex and Lord Halifax; assigning at first a very good reason for his approval, "that they are of that reputation that nobody can blame them for any one action in their whole lives;" but adding another most frivolous and inconclusive, "and these two, with Lord Sunderland, have more land than the king!" Such undue importance was then attached to the possession of large landed

<sup>z</sup> Sir P. Warwick's *Memoirs*. "Gumble's *Life of Monk*.

<sup>b</sup> Courtenay's *Memoirs of Sir W. Temple*.

<sup>c</sup> Sidney's *Correspondence*.



property.<sup>d</sup> The framers of the act of Anne probably contemplated a more stringent compliance with its provisions than has been adopted in practice, a liberal construction of its restrictions having enabled all to enter the walls of St. Stephen's who ought to enter there without scandal from their poverty or meanness.

The charge was untrue, but was it not disparaging to the assembly, that there should be a verisimilitude of truth in Burnet's slander, that the members of James the Second's solitary parliament had neither sense nor substance, and in Evelyn's memorandum, that there were persons of mean and low estate—footmen even—in that parliament. Remembering how basely they truckled to the will of a despot, we feel a sense of humiliation rather than pride, in the discovery that there were fifty-five of noble family, ninety-five baronets, ninety-six knights ;<sup>e</sup> but they gain in popular consideration by the possession of these worldly advantages, however much they may fall in our esteem.

The feeling of contempt shared by the people themselves—for that class of parliament-men, termed delegates or adventurers, was well exemplified in the composition of the States-General, at the period of the French Revolution. A farmer of the name of Gerard was introduced there for the purpose of conciliating the people of his district by making one of themselves a representative of the nation. He was wholly without education, and in manners and dress a mere peasant, but with much honesty and good sense to compensate for his exterior. In writing to his constituents, he expressed himself thus : "What can I do in the midst of a crowd of

<sup>d</sup> Blencowe's Notes to Sidney.

<sup>e</sup> Echard's History.

pettifogging lawyers and attorneys, who believe they know everything, and look upon themselves as the most important branch of the legislature: *although they have not an inch of ground under the sun*, and can only gain by the total subversion of the existing order of things!"

The proverbial disregard to demagogues in the House of Commons has arisen from the just preponderance of men of fortune and station in that assembly. Conventional and legal restraints upon individual liberty of speech have interposed to check interminable debates, and a multitude of hearers submit to an oligarchy of speakers. Even as it is, the pungent paradox of Soame Jenyns will be assented to by a large class, both of representatives and the represented. "We have too much liberty—too much oratory—too many laws, and too many taxes."

When introduced at St. Stephen's into the presence of the first gentleman of England, for the first time, a stranger is apt to be disappointed at perceiving the carelessness both in dress and demeanor, which characterizes the whole assembly, and may think with Jenyns that they exercise too much liberty. This absence of all restraint forms however a traditional privilege. Formerly, there was no peculiar dress or official costume appropriate to the Speaker's use. Lenthall and Littlebone Lisle presided over the puritan assembly in short grey cloaks, peaked hats, and narrow pinched bands. Before the introduction of the wig, the Speaker always wore his hat, but could not wear it without a breach of etiquette when addressing the House. Though members, like their president, sat covered, the custom argued no absence of ceremony or want of respect; for hats were then

worn in private houses, even at dinner time, and, by a fashion still more indecent, at church. Pepys complains in his Diary, of a “strange cold in my head, by flinging off my hat at dinner.”<sup>f</sup>

For a century after the Reformation, the House was composed of plain-fashioned men inclined to puritanism, who spoke plain truth in plain language, clad in plain apparel, and, as appears from the early orders, jealous, even to captiousness, of all innovations in costume that tended to modishness or foppery. In the 39th Elizabeth, Mr. Chancellor of the Exchequer admonished<sup>g</sup> “that none should enter with their spurs not to offend others;” and, four years later, his admonition was enforced by the Speaker. “Mr. Speaker showed to the House that some particular members found themselves aggrieved that the ancient order for putting off their spurs, before they came into the Parliament House, was not observed, which he prayed might be done: others suggested that boots and rapiers be taken away, but nothing was done thereon.”<sup>h</sup>

One peculiarity in their daily dress survived the changes of three centuries—the habit of wearing swords at their sides; a custom which sometimes led

<sup>f</sup> The Jack Sheppard of Charles the Second’s day, Colonel James Turner, assured the people, from the scaffold, of his pious horror at this appearance of levity. “I never durst see a man in church with his hat on: it troubled me very much.”—*State Trials*, vol. vii.

<sup>g</sup> Sir S. D’Ewes.

<sup>h</sup> This suggestion of placing slippers at the door, similar to the custom of depositing their papouches at the vestibules of the Turkish mosques, would certainly conduce to an increase of quiet and order, too many of the members now walking on the heels of their iron-shod boots, as though they were qualifying for Commissioners of *Stamps*.

to dangerous rencontres on days of stirring debate, and after sharp altercation in the committee-rooms, at their evening sittings. Sir Philip Warwick records a memorable instance upon the recurrence of those angry discussions which heralded the Rebellion.<sup>i</sup> "We had caught at each other's locks, and sheathed our swords in each other's bowels, had not the sagacity and great calmness of Mr. Hampden, by a short speech prevented it, and bade us to defer our angry debate until the morning. At three o'clock in the morning the House adjourned."

Another narrow escape from bloodshed, in the altercations of the fiery cavaliers, was alone prevented by the presence of mind and resolute bearing of Sir Edward Seymour.<sup>k</sup> "The question being put, whether a further address should be made to the king for recall of his subjects now in the service of the French king, the grand committee divided, and the tellers, Trevor Williams and Sir John Hanmer, differing in their account of the yeas and noes, some called "Tell again," others "Report," on which great disorder began; gentlemen rising from their places, and mingling in the pit: hot and provoking discourses and gestures passed on both sides, especially betwixt Lord Cavendish and Sir John Hanmer. Some said that Lord Cavendish's sword was half drawn out, but prevented by Mr. Russell, who kept close to him: others said that Lord Cavendish spat in Sir John Hanmer's face, but that was only eagerness of speech; but it was visible to all that Sir James Smith, setting his arms on his side, did, in a rude manner, make through the crowd, and jostled several, and came to the table, where yet more hot discourses

<sup>i</sup> Memoirs of Sir P. Warwick.

<sup>k</sup> Grey's Debates.



passed between him and Lord Cavendish, Mr. Sacheverell, and several others; Mr. Stockdale, and some others, setting their feet upon the mace, which lay below the table, in the usual place, at grand committees. The disorder continuing near half an hour, the standers-by, on the upper benches, expected very fatal consequences might have followed, especially when the young gallants, as Mr. Thynne, Mr. Newport, and several others, leaped over the seats to join Lord Cavendish. But the Speaker, very opportunely and prudently rising from his seat near the bar, in a resolute and slow pace, made his three respects through the crowd, and took the chair. The mace was still retained by the said gentlemen; but, at last, being forcibly laid upon the table, all the disorder ceased, and the gentlemen went to their places. The Speaker said that, to bring the House into order again, he took the chair, though not according to order. His act was generally approved. Sir Thomas Lee moved that there might be an engagement passed, on the honour of every member, standing up in his place, to proceed no further in anything that had happened."

The quarrel thus happily and firmly suppressed was no doubt kindled by the wearing of the rapier, there being no figure in rhetoric more provocative of reprisal than the half unsheathing of a sword. Since the disuse of wearing arms, there have been fewer strifes in public.

The being girded with the sword led so frequently to abuse in the sister kingdom, that Lord Strafford, when viceroy of Ireland, in his absolute will to crush all public evils under the iron heel of the despot, issued a proclamation to regulate parliamentary sittings, and expressly forbade the entrance of any member of either House with his sword. All obeyed,

except the young Earl of Ormond, who told the usher of the black rod, on demanding his sword, that he should have no sword of his, except through his (the usher's) body.<sup>1</sup> Equally concise and determined was the rejoinder of the spirited Irish nobleman, when, in reply to the irritated inquiry of the lord deputy himself, what were his reasons for such insolent behaviour, he laid on the table his majesty's writ which had summoned him to parliament "*cinctum cum gladio*," or "*per cincturam gladii*."

We have been taught by a modern dictator the short distance between the sublime and the ridiculous. The sword has been laid aside, and there is substituted in its stead that innocuous weapon of self-defence, with which members now almost universally arm themselves, which fill the lobby, and the bringing an action for which by a stranger was once treated as a breach of privilege,—the favourite umbrella. A common walking-stick had superseded the sword in the morning walks of the Macaroni, about 1720. The umbrella had been introduced a few years previously, but the carrying it by gentlemen was considered a mark of effeminacy. There is a quizzing advertisement in the *Female Tattler* for 1709, "to inform the young gentleman that for fear of rain borrowed the umbrella at Will's coffee-house of the mistress, that, to be dry from head to foot, he shall be welcome to the maid's pattens." Custom has completely reconciled us to this useful appendage; and effeminacy can no more be imputed now to the bearer of an umbrella, than valour would be argued of one who should attach to his side the rusty sword of the puritan.

The Long Parliament heartily supported Prynne in

<sup>1</sup> Carte's *Life of the Duke of Ormond*.

his invectives against the unloveliness of love-locks, and the Roundheads sat confest, without uttering a word. The apparition of the man in plain black clothes, with grey worsted stockings, who walked up and down the floor of the House, with his hat on his head, and his large basket-hilted sword at his side, and, with a stamp of his foot, filled St. Stephen's chapel with soldiers, would have lost its full effect, had Cromwell been differently dressed. He personified the spirit of the age—homely rudeness of attire, that concealed a martial soul, a sanctified courage without show, and a slovenly daring. Ludlow expressed his wonder—who can avoid sharing it?—that not a single member attempted to draw his sword.<sup>m</sup>

With the Restoration was revived the splendour of costume. The long hair of the Cavaliers naturally induced the fashion of the periwig, the use of which, under various lengths of curl, became universal for half a century, and gave that uniformity of appearance to the courtiers and statesmen of the day, which is so visible in the portraits of Sir Peter Lely and Kneller, and in which individuality of character appears thoroughly concealed and lost. It also gave that sameness of look and carriage to the assembled Commons, which is now peculiar to barristers in their professional costume, when assembled together. The Cavaliers could not conceal their displeasure and amazement, at the singularity of Mr. Boyle, chancellor of the exchequer, persisting to wear his own hair.

With less prudence, probably with less taste, the thoughtless member for Stockbridge, poor Steele, sported a black peruque, that was valued by its maker

<sup>m</sup> Ludlow's Memoirs.

at the costly sum of £50, and an embroidered coat, for which his tailor hoped one day to receive nearly the same amount. Sumptuousness of attire was encouraged by the gay court of Charles II., in political contrast to the pinched garb of the republican—embroidered suits of taffeta or velvet; scarlet stockings, rolled above the knee; sometimes, as in the case of Richard Cromwell, scarlet breeches; laced ruffles; large white or black periwigs, so long and full of hair, as to realize the description of the *friseur* to Lord Foppington, “It will serve you for a hat and cloak in all weathers.”

Next to the head, particular respect appears to have been paid to the leg and foot. February 23rd, 1688, it was resolved that the ancient order be observed, that, upon new members coming into the House, they be introduced to the table between two members making their obeisances, as they go up, that they may be known by the House. It is considered contrary to usage and etiquette that a member so introduced should appear in boots. So fastidious were the Irish Parliament in this respect that a Colonel Tottenham acquired for life the nickname of “Tottenham in boots” for venturing to appear in them, soiled with hard riding, time enough to be counted in a division. Hardy informs us<sup>a</sup> that, “having just come to town, and hearing the important question under discussion (to continue the supplies for twenty-one years, defeated by only one vote) he hurried down to the House, without giving himself time to take his boots off. The elder members murmured sadly.” The eccentric Lord Peterborough was censured for slovenliness, in wearing boots with his evening dress.<sup>o</sup>

<sup>a</sup> Memoirs of Lord Charlemont.    <sup>o</sup> Suffolk Correspondence.



Knee breeches, silk stockings, and shoes with silver buckles, were considered an indispensable part of the afternoon's costume. Evelyn rails at pantaloons then creeping into wear, as a kind of hermaphrodite dress, and of neither sex.<sup>p</sup> Sir William Whitelocke, one of the members for Oxford university, and queen's serjeant, is addressed in the *Tatler* by the familiar appellation of "dear shoe-strings," and laughed at for the meanness of his appearance in substituting bits of ribbon for silver buckles. The cost was regarded as of more consequence than good taste.

Oriental magnificence of apparel was so much fostered by the court of Louis-le-Grand, who would never suffer himself to be seen without his flowing wig—attaching an idea of majesty to a large volume of head—that his royal brother of England adopted the fashion, and had once a notion of introducing the Turkish robe into daily wear.<sup>q</sup> It was natural that the sauntering Charles should like a dress that might be worn with a loose and careless air. Marvell, in his poem, entitled "The King's Vows," sneers at this Eastern fancy,—

"I'll have a fine tunic, a sash and a vest,  
Though not rule like the Turk, yet I will be so drest,  
And who knows but the fashion may bring in the rest."

The whim of the moment was soon dismissed; but the monarch's predilection for richness of costume constrained gay courtiers and loyal statesmen "to walk" daintily, "in silk attire," to sport gay colours, and don velvet doublets. The chancellor, Lord Shaftesbury, we learn from North,<sup>r</sup> sat upon the bench in "an ash-coloured gown, silver-laced, and full rib-

Vestiaria.

<sup>q</sup> Harris' Charles II.

<sup>r</sup> Examen.

boned pantaloons, displayed without any black at all in his garb, unless it were his hat."

The propriety of all senators, commoners as well as peers, wearing robes like the senate of Rome, was advocated at the Revolution in a pamphlet full of strong sense, but darkened with fanaticism.<sup>s</sup> The anonymous author earnestly contends, that, "as in the courts at Westminster, so much more in the highest court of England, all parliament men, whilst they attend on the parliament, should be obliged, on high penalties, to wear a robe or vestment becoming their respective persons, and the gravity and authority of the great council of England, as all the nobility and gentry, both young and old, who have a right to sit in the great council at Venice, and all the Roman senators did anciently, and do at this day; that so they may be everywhere discerned and receive their due respect, and be ashamed, as we now see many clergymen are for their robes' sake, to be seen frequently in play-houses, dicing-houses, cock-pits, taverns, or houses of worse repute, and during their attendance in parliament, if they be found in such places and ways out of their robes and vestments, then to lose their wonted protection from arrests, according to that saying, 'God giveth his angels charge over us to keep us while we are in our ways,' but out of our ways no protection of angels to be expected. Let no man object here that parliament-men ought rather to wear their swords, which suit not with robes or gowns, because the writ to the sheriff is to choose *duos milites gladiis cinctos*, for the meaning thereof is, two knights dubbed, but it was ever expected, and sometimes especially commanded,

<sup>s</sup> Somers Tracts, vol. xii.

that they should attend parliament *gladiis discincti*, without their swords, and their robes then will be sufficient for their persons, as well in England as it is now in other countries."

The advice thus strangely tendered was of course disregarded, but proves how generally prevailing the love of dress must have been, when a rigid puritan could argue so zealously in its favour. The late Lord Erskine advocated, with the like ill-success, the wearing of their official robes in the streets by our judges. He attached so much importance to the setting off his person to the best advantage, that he never appeared on a special retainer before a jury without having his wig elaborately dressed, and a new pair of gloves. The first Mr. Pitt attributed equal importance to costume, and, when free from sickness, always presented himself to the Speaker's eye in a full dress coat, and that tie-wig to which he attached as much importance as the favourite actor to satin doublet and silk hose, to rouge and false eyebrows. When compelled from gout to wrap himself up in flannels, the great orator would carry his arm in a sling. The malicious Walpole intimates<sup>t</sup> that the black riband was worn for effect, and that, in the vehemence of invective, he would sometimes draw the infirm arm from its resting-place, and flourish it vigorously in the air. In that formal tailor-barber-ridden age, ministers were expected to appear as if dressed for an evening party. "The opposition," said old Horace Walpole,<sup>u</sup> "treat the ministry as my friends treat me; if I am in plain clothes, they call me a slovenly, dirty, fellow; and, if by chance I wear a laced suit, they cry, 'What, shall

<sup>t</sup>Letters to Sir Horace Mann.

<sup>u</sup>Coxe's Life.

such an awkward fellow wear fine clothes.' ” When Mr. Pitt talked of the grey hairs of this venerable jester, he pulled off his wig by way of instant practical refutation, and displayed a bald head.

Though not intending to speak, country gentlemen would not violate all etiquette so completely as to venture across the threshold of the House in their morning trim. The amusing Boswell has given us a description of their dress. Sir Philip Jennings Clark wore his own white hair in a bag of goodly size, a black velvet coat, with an embroidered waistcoat, and very rich laced ruffles—a suit which the stern judgment of Dr. Johnson pronounced to be not in accordance with whig principles. A regret for the disappearance of these braveries would certainly well consist with the professions of an old tory.

The floor of St. Stephen's chapel presented a gay scene from the commencement to the middle of the last century, when members wore their orders, and stars glittered on the front benches, both to the right and left of the Speaker, and, after the revival of the order of the Bath, red ribands were contrasted with one or two blue. Lord North was always designated as “the noble lord in the blue riband.” It was the etiquette to wear orders as at a full dress party, and no sneer could have been ventured at the silk stocking, or white waistcoat, laced cravat, and lace ruffle: the boldest leveller would not have dared to point a laugh at the single-breasted coat, powdered hair, or queue.

Of the splendour of vestment which then prevailed scarcely a trace remains. On the first day of the session, the four members for the city of London



still take their seats on the treasury bench in all the gorgeousness of scarlet robes and chains—a rich personification of aldermanic dignity. The mover and seconder of the address are still bound to appear in uniform or in court dress. The Master of the Rolls was accustomed to sit in his wig, and gown and bands, and the Speaker and the clerks are still attired in professional costume. The last Speaker of the unreformed House of Commons, with the red riband of the order of the Bath thrown across his person, looked an admirable impersonation of the departed grandeur of apparel. Even Fox, who afterwards assumed the uniform of Washington, a blue frock coat and buff waistcoat, was seen by Wraxall in the House, apparelled *en petit-maitre*, with a hat and feather.\* The American Revolution, amid the wreck of things of greater moment, demolished court suits, and black swords, and bag-wigs; and Mr. Pitt's sumptuary tax completed the discomfiture of hair-powder. The French Revolution carried forward the republican principle in dress, and encouraged that sombre taste—a sort of citizenship of attire—which has levelled all distinctions, and rendered the hope of attaining notoriety, except by some eccentric departure from the established mode, difficult, if not impossible.

Since then, each has dressed himself as seemed good in his own sight. The cant phrase of a “shocking bad hat” may not improbably trace its origin to the head-gear sported by some honourable members in the House; whilst the pride of others has been shewn in those threadbare coats which none but the wealthy feel themselves privileged to wear. These affectations

\* Wraxall's Memoirs.

of lowliness form, however, excepted cases. A gentlemanly character is preserved by the great majority, with little aid from the tailor, and none from the per-ruquier ; the best rule for dress has been a total absence of restraint, save that which respect for society enjoins, unpretending simplicity and elegant neatness, the avoiding of singularity, and concealment of all pretensions to effect.

## CHAPTER XIV.

---

EQUALLY unaffected with their dress is the general deportment of members. The contrast is remarkable, indeed, between them as an audience and their primitive predecessors, to whose simplicity of manners may be ascribed many of those traits of indecorum which would now be deemed intolerable, and those decisive methods of interruption which would be perfectly shocking to the staid notions of modern propriety. "An old doctor of the civil law spoke, but because he spoke too long and too low, the House *hawked and spat*, to make him make an end." Even then this disagreeable mode of coughing down a member was not permitted to pass without rebuke. Sir Francis Hastings stood up and said: "My masters, I utterly mislike this strange kind of course in the House! It is the ancient usage, that every man here should speak his conscience, and that both freely and with attention, yea, though he speak never so absurdly; I beseech, therefore, that this way may be amended, and this troubling of any man in his speech no more used."

The House, however, soon relapsed into their bad habit, for, though seldom inattentive to a member

who says anything worth their hearing, they are, as a body, most intolerant critics, exhibiting no mercy for pedantic dullness, and openmouthed dislike to the garburity of lawyers. In 1601, "Serjeant Heale affirmed in his speech, 'The queen hath as much right to all our lands and goods as to the revenues of her crown,' (a strong proposition, undoubtedly) at which all the House hemmed and laughed and talked. 'Well,' quoth Serjeant Heale, 'all your hemming shall not put me out of countenance.' So Mr. Speaker stood up and said: 'It is a great disorder that this should be used, for it is the ancient use of every man to be silent when any one speaketh, and he that is speaking should be suffered to deliver his mind without interruption.' So the serjeant proceeded, and when he had spoken a little while, the House hemmed again, and so he sat down."

The whole scene thus graphically told by Sir Symonds D'Ewes has been repeated innumerable times in more courtly fashion, for the Speaker must rejoice in secret at the triumph of his audience over the prosing serjeant who will vex the dull ear of the House. However proper the interruption, the sibilant method of making it was so indefensible, so injurious to the feelings of the party assailed, so unbecoming the assailants, and likely to lead to a breach of the peace, that a motion against the practice seems to have met with general assent. In 1604 a member makes a motion against hissing "to the interruption and hindrance of the speech of any man in the House, as a thing derogatory from the dignity, not becoming the gravity, and as much crossing and abating the honour and privileges of the House as any other abuse whatsoever. The motion is well approved." Indeed, from this pe-



riod, the bad habit appears to have been silently discontinued.

A more inoffensive mode of hinting weariness and disgust was adopted by the witty Harry Martin, whose good-humour and pleasantry almost betray us into forgetfulness of the regicide. He was wont to sleep much, Aubrey tells us,<sup>a</sup> in the House, but afterwards explained that it was dog-sleep, a means to intimate fatigue on hearing a prosy oration. He was nodding his head, when Alderman Atkins moved "that such scandalous members as slept, and minded not the business of the House, should be put out." Harry Martin stood up—"Mr. Speaker, a motion has been made to turn out the nodders. I desire the noddees may also be turned out." The House laughed at the repartee, but would not incur the risk of being counted out, if Martin's hint were zealously enforced.

With equal freedom, but with more pleasure to the orator, would the House hum satisfaction—a token of approbation then tolerated at church. We read of an eloquent doctor at Cambridge, sitting down in the pulpit to enjoy the particularly loud hum which had rewarded the close of one of his most striking passages. Even this harmless, though somewhat drowsy method of assent, was objected to by some parliamentary purist, who may not have been often encouraged to proceed in his effusions by the droning sound. "I move," said Sir William Wheeler, "for candles, and also that humming be forborne, which is not parliamentary, nor ever used but at orations and in schools."

A more exhilarating cheer of encouragement, the cries of "hear, hear!" as sweet music to the orator as

<sup>a</sup> Aubrey's Letters.

the deep-mouthed note of his pack to a fox-hunter in the full ardour of the chase, has been substituted for this drowsy hum. The same shout of "hear him!" in irony, and the still more recent method of ejaculating "oh! oh!" in cadences not easily mistaken, have superseded the hisses of less refined auditors. But, though in different forms, and in somewhat more polished guise, the modes of interruption and signals of impatience have certainly not decreased either in frequency or duration. The House which bayed down Burke was to the full as energetic in tokens of dislike as the more homely assembly which hooted the prosing Serjeant Heale. Other marks of disapprobation were common to both, perhaps increasing in intensity with the progress of refinement. There is no mistaking those intelligible signs of repugnance which a more fastidious, and therefore more impatient, audience, have adopted—the half-suppressed yawn, but so suppressed as to render it still more audible—the ominous banging of the green door, which gives you pretty strong hints that you are likely soon to have only the Speaker and serjeant-at-arms for your audience—the cough, ambushed in the members' gallery, emitted from lungs that seem to have economized a month's inflation for one explosion.<sup>b</sup>

The necessity for these artifices of impatience seldom arose in the old days of debating, when long intervals of silence were not unusual. In the ancient reporters we meet with these passages frequently—" *Altum silentium*, a long while."—"A pause for two or three minutes."—"The House sat looking at each other." "We are," said an old county member, "like deep waters, the deeper the silenter." But little

<sup>b</sup> Adair's Clubs of London.

of that self-confidence with which modern members in general address the House appears to have prevailed. A modest member would then, much more frequently than of later times, shrink from the clamorous interruption of an unwilling audience, and sit down in confusion, "scared at the sound himself had made." A bill, we read,<sup>c</sup> was brought in with a praiseworthy object, but which, perhaps, might be accomplished without the interposition of parliament, 'to avoid double payment of debts.' "To this bill," says the worthy reporter, "Mr. Zacharias Locke began to speak, but, for very fear, shook so that he could not proceed, but stood still a while, and at length sat down." In part explanation of his shyness, it may be observed, that he was merely member for a borough, and, as a simple burgess, stood abashed in the presence of his superiors.

Notwithstanding the comparative rudeness of speech and general simplicity of carriage, never was respect for gentle birth more rigidly exacted, forms and ceremonies held in greater awe, or differences in degree more marked. Those who were not born gentlemen, "*generosi a nativitate*," were prohibited by statute from sitting as knights of the shire; and the registers<sup>d</sup> record an instance of a county member, whose election was superseded because his coat of arms could not be discovered at the Heralds' Office, and the Garter King would not certify that he was of gentle birth. The burgesses spoke of themselves as being of the meaner sort,<sup>e</sup> an inferior order to the knights, and accordingly had lower stations in the House allotted to them. Immediately surrounding

<sup>c</sup> Sir Simon D'Ewes.

<sup>d</sup> *Natura Brevium*.

<sup>e</sup> *Parliamentary History*, vol. i.

the Speaker's chair sat the privy councillors on the front benches, always reserved for their use; much greater deference being paid to their rank and office than in later and more levelling times. Closing up immediately behind and below them were the knights, whilst the members for boroughs appear to have been relegated to the back rows and the vacant places near the door. According to the Scriptural language of that day, they might be compared to rustling reeds whom the cedar of Lebanon had overshadowed. Yet even from the lowly condition of Goodman Burgess would arise a hollow murmur of complaint at supposed contumely and slight. "The Speaker was in duty bound to respect the meanest member, as well as those who sat about the chair."

When Sir Carey Reynolds advocated a bill for the better observance of the Sabbath, the honest knight made his best bow to the treasury bench,<sup>f</sup> "I would be a suitor to the honourable persons that sit about the chair, that the British exercise of bear-baiting may be used on some other day, and not the Sabbath." On another occasion, Sir Hugh Beeston stood up at the lower end of the House, and said, "We that be here cannot hear you that are above. I would it would please them that speak there to speak louder. I certify that I am here for a town."

The front seats to the right and left of the chair are still reserved for the ministry and the leaders of opposition. Anciently, the leading antagonists sat side by side, and Pulteney, after consenting to pursue Walpole to extremities, sat next to the premier, and whispered to him the correct reading of a line from Horace. It is related of Rigby,<sup>h</sup> an unflinching sup-

<sup>f</sup> Townsend's Proceedings. <sup>g</sup> Cox's Walpole. <sup>h</sup> Wraxall's Memoirs.



porter of ministers, that he always sat on the opposition side, as if to delude himself and others with the notion of independence, but equally determined, though he never sat with his friends, never to vote against them. It required the bronze front and the iron nerves of Rigby to speak from hostile benches, and not quail before the audible dislike of all who surrounded him at the close of every sentence. .

A similar eccentricity, in taking up a disadvantageous position was formerly adopted for effect. By a startling novelty, as if to increase the attraction which his extraordinary proposition of itself created, Sir Edward Deering moved from the gallery, his bill for the extirpation of episcopacy ; since the success of which adventure, members have, on rare occasions, exercised the privilege of getting up aloft to catch the Speaker's eye. Mr. Martin, member for Galway, acquired his sobriquet of "Humanity Martin," by moving, from the same elevated region, his bill for the prevention of cruelty to animals.

The Speaker's exhortation, "Gentlemen will be pleased to take their places," has been required, from the earliest times, to rescue the House from disorder, and has been sometimes urged in vain. We read of Waller the poet, who had taken a seat on the steps, refusing to move on the Speaker's bidding, and arguing his right. "Cuts are made in the seats for steps. In the Long Parliament, steps were seats, and seats were steps, as in an amphitheatre. The Rump put backs to our seats, and the steps now newly made were seats." Sir William Coventry urged the importance of deciding the point : "The greatest misfortune ever like to befall us was about those seats, a doubt whether a gentleman was told twice ;" and Sir William

Meres attempted to prove, clearly as a syllogism, or a problem in Euclid, the untenableness of Waller's argument. A man ought not to be disquieted in his seat; but he may be disquieted in this passage, therefore it is no seat.— *q.e.d.* This question, so cap-  
tiously raised, was, at that time, left undetermined; but afterwards decided by a standing order. “10th February, 1698. Ordered, that every member, when he comes into the House, do take his place, and not stand in the passage, as he comes in or goes out, or sit or stand in any of the passages to the seats, or in the passage behind the Chair, or elsewhere; that is not a proper place.”<sup>i</sup>

On the 10th March, 1734, a complaint being made to the House, that places were kept in the House for members who were not at prayers, by laying papers for that purpose, it is declared that no member is to keep any place in the House by book, glove, paper, or otherwise, till after the prayers, and then only for himself. “It is commonly understood, that members who have received the thanks of the House in their place, are entitled to that place whenever they come to the House, at least during that parliament; and it is generally allowed them by the courtesy of the House. It is frequently allowed to members who have passed through the great offices to keep the same seat, without being put to the inconvenience of coming down to take it, as, in my memory, Mr. Pitt, Mr. Fox, Mr. Grenville, and several others. I speak here as well of the fathers as the sons; and it is remarkable that the persons bearing these three names, should, at the same time, though at different periods, have been the three most considerable and leading members of

<sup>i</sup> Journals, vol. xii.

the House.”<sup>k</sup> The Finch family were a still more conspicuous instance of inherited talent, who, for four generations, fed the House with a succession of leading speakers. Few dialogues could be imagined of more interest than one between the first and last of the race, which might unfold the results of their great parliamentary experience on the temper and tone of the House as an audience.

To judge from the frequent entries in the Journals, the necessity for strict discipline was most imperative at the time when the once Lower House had begun to concentrate in itself all the offices of the state. We find, in the same Journal which records the supremacy of their power, several good old-fashioned but stern orders for keeping all symptoms of impatience in awe, and suppressing the stubborn spirit of insubordination. Thus, in December, 1640, it was ordered “that whoever does not take his place, or moves out of it to the disturbance of a member speaking, Mr. Speaker shall present his name, and the House shall proceed against him.”<sup>1</sup> It was, with equal rigour, “Resolved, 5th May, 1641, that if any man shall whisper, or stir out of his place, to the disturbance of the House, at any message or business of importance, Mr. Speaker is ordered to present his name to the House, for the House to proceed against him as they shall think fit.”

A similar gravity pervades the orders after the Restoration, however lax the observance. June, 1661, the Commons order that all members who climb over seats shall pay twelve pence to the serjeant. 1662, ordered that all members interrupting the House by private discourses shall be called to the bar. 1678, ordered that the postmaster of the House

<sup>k</sup> Hatsell.

<sup>1</sup> Journals, vol. iv.

shall not deliver out letters to the members during the sitting. These orders could not have been religiously obeyed, but were framed in a spirit of the most punctilious decorum, more suited to the still propriety of the Puritan, than to the careless tone and temper of the courtiers of Charles II., who required to be frequently admonished,<sup>m</sup> “that, in a senate composed of gentlemen of the first rank and fortune in the country, and deliberating on subjects of the greatest national importance, decency and decorum should be observed, as well in their deportment and behaviour to each other, as in their debates.”

The rigid rules of exact discipline, however unexceptionable in themselves, could not but meet with scant observance from those merry parliaments into which many courtiers and country gentlemen reeled after dinner. Pepys records in his Diary, 1661—“Told how Sir Allan Brodrick and Sir Allen Apsley did come drunk the other day into the House, and did both speak for half an hour together, and could not either be pulled or bid to sit down and hold their peace, to the great contempt of the king’s servants and cause, which I am grieved at with all my heart.” Their misbehaviour must have been excessive to excite such comment, for partial inebriety was common. Pepys soon after mentioning a three-hours’ speech which he made, in defence of the commissioners of the navy, relates, “My speech being so long, many had gone out to dinner, and came in again half drunk. The parliament do cry out how fine a thing it is for a secretary of state to dance a jig, and that it was not so heretofore.” They had forgotten the dancing days of Lord Chancellor Hatton. A few months later,

<sup>m</sup> Hatsell.



this Dutch painter of manners draws a more striking description of “those roaring times.”<sup>n</sup> “The House mad to-day, specially the Hectors and bravadoes of it, there being letters about the fanatics coming in bodies to the church, and pulling the surplice over the parson’s head.”

We can scarcely wonder at English senators sinning against propriety, when even the grave Scots bowed down to the vinous influence of the times. When the Scottish Parliament met in 1669, the members were, in many instances, affected by wine, and more than once obliged to adjourn, because the royal commissioner was too intoxicated to behave properly in the chair.<sup>o</sup> The Pensioner Parliament, too jovial in their good humour on the hail fellow system, during seasons of bad temper, were found as quarrelsome as boon companions in their cups. Marvel chuckles, in his letters to the grave citizens of Hull, “over the pretty ridiculous figure the House cut, when they were taken by Sir Thomas Clifford, after presenting an address, Speaker, mace, and all, into the royal cellars, to drink his majesty’s health.” Quarrels were plentifully sown by such convivialities, and we read sometimes of blows being exchanged in the House by Trelawney and Ash, who called each other rebel and papist.<sup>p</sup> At the wish of the House, the Speaker invited the disputants to dinner, taking engagements from them to proceed no further.

His authority was more frequently interposed in a rougher fashion; for example, in 1673: “It is against the rules of the House for members to speak on one side the House and talk on the other.” In 1675—“If any man have a privilege to be disorderly, let me know

<sup>n</sup> So called by Burnet.    <sup>o</sup> Laing and Lockhart.    <sup>p</sup> Grey.

it." Says another gentleman—"Give £1,200,000," irregularly with his hat on. This way of motion by those gentlemen is bidding at Gleek. On another occasion, Secretary Coventry having delivered a message to the Speaker, that the king commanded the House to attend him presently at the Banqueting-House at Whitehall, some members rising from their seats before the king's command had been reported formally by the Speaker, he reprimanded them harshly. "The burgesses of Newcastle and Leicester are in great haste to be gone before the king's message is reported, as if they went to get places at a show or a play."

The severity of this rebuke may be partly ascribed to the petulance of the then Speaker, Mr. Seymour, whose interchange of sweetmeats with Colonel Birch has been previously noticed.<sup>a</sup> During another of their frequent altercations, the haughty Speaker having sneered at the veteran's occupation as a carrier, the homely colonel retorted, "It is true I was once a carrier, and it is well for the gentleman that he was not one too, for if he had, he never would have been anything else." The same petulant Speaker having reflected upon Sir Thomas Meres for sitting up so late at night, that he came not timely in the morning to make his report from the committee of privileges, Sir Thomas Meres said, "It is not true I sat up so late last night; I hope you'll speak truth whilst you are in the chair!" Alas! for the decorum of the House, when such words could be addressed to their head in the presence of his brother members, and the utterer of them go unpunished!

A good reason for this cavalier treatment both of their Speaker and of each other, is given by Marvel, who

<sup>a</sup> In vol. i.

explains that constant familiarity had made them but too well acquainted, and produced its wonted consequence—contempt : that they knew the circumstances of every man, and could divine his vote as well as if they saw below the throat and cravat. Sir Robert Holt, proffering several times to speak, and others being called upon, said, “he wondered a knight of Warwickshire may not be heard as well as others.” Sir Thomas Lee sharply explained the reason of the little attention that was paid to him. “A man that is outlawed after judgment cannot sit here, and knows then no reason why a knight of Warwickshire should be heard.” For the frequent calls to order which these interruptions occasioned, Sir William Coventry made an ingenious apology. “We have great reason to give grains of allowance to one another. In ancient times but a few persons spoke in the House, and their speeches were ready penned. The powder and shot was ready made up in cartridges, ready cut and dried, and a man had then time to think ; but now, that we speak on a sudden, would have some grains of allowance given.”

Some strong efforts were made, though ineffectual, by sober country gentlemen, to restrain the disorders into which the House fell. When Sir J. Trevor reported the address not to grant a supply, there was a great cry many times repeated of “agree, agree !” Sir Jonathan Trelawney remonstrated—“To cry ‘agree, agree’ savoured to him like club-law.” We cannot wonder at the disorder which reigned in the committees above stairs, when we remember that they sat in the evening, which caused them to be compared to a pie-poudre court, and that smoking was allowed till after the Revolution. There appears a new regu-

lation in the Journals, 23 March, 1693. "No tobacco to be taken by any member in the gallery, nor at the table sitting at Committees." Hatsell, whose ideas of propriety were shocked at this entry, would fain have restricted its meaning to the table in the smoking-room, but there was then no separate smoking-room—Bellamy's was not.

Public morals have been improved immeasurably within the last century ; the manners of public men have been subdued, and chastened, and refined, yet the balance in favour of modern decorum is not, perhaps, so great as might have been anticipated from the increase of civilization. Hissing has indeed gone out—striking in the House is an outrage unheard of—smoking has been long confined to its special room—scoffing gibes and personal observations between the Speaker and honourable members would be viewed as something portentous, like the ox bellowing in the Capitol, or any other of the prodigies in Livy. But discord in all its varieties of inharmonious sounds (the note of the goose excepted)—sharp recrimination, and bitter personalities—the loud buzz of conversation and laughter, as at a club—carelessness in dress and demeanour, render St. Stephen's Chapel more disorderly than becomes the first assembly of gentlemen in Europe—our brethren in America need not chafe—the first assembly of gentlemen in the world.

The series of our Parliamentary Reports is so broken and incomplete, that we rather conjecture, than determine with accurate knowledge, the manners of ancient parliaments and their habits of decorum. The distance of time, as illusive as that of space, may lend some enchantment to the view of old St. Stephen's Chapel, and conceal, beneath the sheltering



veil of antiquity, many defects that would startle on closer examination. The pious character of the first reporter, Sir Symonds D'Ewes, and the noble assemblage of patriots and statesmen—Burleigh, Cecil, Raleigh, Bacon, Yelverton,—whose heroic, and stern lineaments are depicted with the skill of a friendly limner, and whose sayings he commemorates in a history, “that God and good men would not willingly let die,”<sup>r</sup> may induce a reverence almost superstitious for the gravity and wisdom of their deliberations, and lead to an erroneous impression, that the manners of the representatives in general were less rude and inartificial than they really must have been. Parliament, as the radius, not less than the type and shadow, of the spirit and intelligence of the people—reflecting that spirit, and directing that intelligence—must be refined or coarse, chivalrous or rustic, in proportion as the standard of public manners and morals is exalted or low.

A glimpse may be caught in Strype's *Annals* of the mode in which a blunt member expressed his ferocious exultation at the atrocities of Queen Mary's reign. One Storey dared to make a boast, in the assembly of English gentlemen, “that, at Uxbridge, he had thrown a fagot at an earwig (as the Protestants were then contemptuously styled), whilst singing psalms at the stake.” Similar opinions, savouring strongly of the soil through which public sentiment ran, were probably suppressed by the sound judgment of the worthy knight, the earliest and best reporter, who preferred recording those remarks “which tended to profit or delectation.” The prevailing impressions which the perusal of his goodly folio seems calculated

<sup>r</sup> Milton's *Prose Essays*.

to inspire, are a sense of admiration at that simplicity of manners which appears never to have sought to conceal its emotion, and of reverence for those lofty thoughts, tinged with fanaticism, but enshrined in hearts of courtesy,<sup>s</sup> which dignified and ennobled the leading speakers.

Accustomed to the conventional suppression of feeling, we are astonished at the frequency with which the leaders of the popular assembly wept. Never, since the days of the lachrymose Æneas, did full-grown men shed tears more profusely, as often for joy as grief. Mr. Wingfield expressed great delight on seeing monopolies abolished, and wept. Sir Edward Coke wept copiously on the introduction of the Petition of Rights: the Speaker lifted up his voice and wept, when detained in the chair, sobbing forth that he dared not obey the will of the House, contrary to the pleasure of the king.<sup>t</sup>

With the tearful gravity of these elders, there seems to have been blended a strong leaven of puritanism, full of biblical illustrations, and biblical language. Their first cause of quarrel with the sovereign was the fixing a day for a fast unbidden. The same wish was indulged under Queen Anne, from a feeling of sectarian bitterness, and wisely refused: as the queen knew well that with her English subjects fasting and ill-humour would invariably go together. The patriotic proceedings of the Puritans, who gathered strength and firmness in the last Parliaments of Elizabeth, are well chronicled by Mr. Townsend, a young lawyer, who spoke in the House so early and so well, that, on

<sup>s</sup> Brooke's Sir Philip Sidney.

<sup>t</sup> The first volume of Parliamentary History contains many more instances.

his sitting down, Bacon immediately chanted the canticle, "Out of the mouth of babes and sucklings hast thou perfected praise!"

The Parliaments of James are unrecorded, with the exception of two eventful sessions in 1620 and 1621. An illustration of the style in which the leading orators controlled the Parliaments of Charles is fortunately afforded in the Collection of Speeches of Sir Benjamin Rudyard, called the silver trumpet of the House, who has inlaid deep thoughts with striking figures of rhetoric, and is scarcely less quaint than sublime. Addressing the House, on the verge of civil war, the phrases of the orator are tinged with mournful solemnity, and have caught hues of sadness from the tone and temper of the times. "I assure you, Mr. Speaker, we may blow up this House without gunpowder, we may do it with our own passions. We are not now upon the *bene esse* of the kingdom, we are upon the *esse* of it, whether we shall be a kingdom or no. Men and brethren, what shall we do? Is there no balm in Gilead? One Parliament may instruct another, as one day telleth another. The hearts of kings are great as are their fortunes; then are they fitted to yield, when they are yielded unto. It is comely and mannerly that princes, in all fair appearance, should have the better of their subjects. For my own part, I should be very glad to see that good old decrepit law Magna Charta, which hath been kept so long, and laid bed-ridden, as it were—I shall be glad, I say, to see it walk abroad again with new vigour and lustre, attended by the other great statutes, for questionless it will be a great heartening to all the people." In another speech against scandalous living, the orator applies, with feeling and force,

a scriptural illustration. "The best and gentlest way to dispel darkness is to let in the light. We say that day breaks, but no man ever heard the noise of it. It is comely that the outward prosperity of the Church should participate in the prosperity of the temporal state ; for why should we dwell in houses of cedar, and suffer God to dwell in skins?"

Sir Benjamin Rudyard was good patriot enough, and so wisely provident as to transcribe and preserve reports of his speeches : heartily must the reader of English history wish that Hyde and Pym, Wentworth and Falkland, and their other great antagonists and compeers, had equally respected posterity and their own renown. The eloquence of Lord Digby alone would make the Long Parliament a school of oratory. But, careful only of immediate effect, they ordered none but the orations of the opposition members to be printed ; those, for instance, of St. John and Pym on Lord Strafford's attainder, Pym's speech of three hours on the Irish Rebellion, and Prynne's pleading against Laud. When the loyal party dared to assert a similar privilege, their speeches were directed to be burnt by the common hangman : triumphant sectaries could not tolerate the publication of a debate that was not previously revised by themselves, and had not received their imprimatur.

A member sitting with pencil and paper in hand seems to have been watched with extreme suspicion. Mr. Burton, whose literal reporting makes the reader feel as if personally present at the sittings of the Commonwealth Parliaments, could not pursue his vocation without fear of commitment. He records, " I writ nothing this day in the House." A friend,

" Burton's Diary, vol. i.



Captain Lilburne, told me that it would be taken notice of. Mr. Robinson asked me this morning, before the Speaker came, if I took notes at Scot's committees : I said yes. He told me he had much ado to forbear moving against my taking notes, for it was expressly against the order of the House. I told him Mr. Davy took notes all the Long Parliament, and that Sir Symonds D'Ewes wrote great volumes, as well his own speeches as others, when he was prevented speaking. I said, 'How should young men learn arguments without their notes?' He said, Mr. Solicitor Ellis was highly ruffled at one time for taking notes, and was commanded to tear them in the face of the House. It takes away, quoth he, the freedom and liberty of men speaking, for fear their arguments be told abroad, and a great deal to this purpose, which I evaded as well as I could. Note: I am not aware of any order against taking notes. It was ordered indeed, in 1641, July 13, that no member of this House shall either give a copy or publish in print anything that he will speak here without leave of the House."

The rough report thus jotted down gave only the bare skeleton of the argument, but should be received with gratitude. The torso is welcome where we cannot have the statue. Mr. Burton, after marring a speech of Waller's, adds, ingenuously enough : "It was a pretty, witty, speech ; but I have wronged him in it." Of another member we are told, he *rumbled* nothing to the purpose.

Most of the notes of Anchitell Grey, who recorded the proceedings of Charles the Second's Parliaments, are bald disjointed chat—heads of speeches partly forgotten—replies to questions that are omitted—allusions to repartees untold. Yet how large is the debt of thank-

fulness we owe to the worthy member for Derby, and to the daily letters addressed by Marvel to his constituents at Hull, for the light, clear, strong, and true, which they throw on the sayings and acts of the Pensioner burgesses! Equally indebted are we to Somers, for the pencil notes in which he sketched the debates of the Convention.

Strange to say, the unwise jealousy of Parliament gained a fresh accumulation of strength at the Revolution, and grew wild in its eager dread of publicity, after the accession of the House of Hanover. The punctilious Speaker, Arthur Onslow, who bore in mind the thirty resolutions of the House against printing; and Walpole, the authors' foe, who cared for no books, except those in a merchant's office, were not content with stifling the eloquence of St. John, marring the grace of Wyndham, and stunting the exuberance of Pulteney; but determined to collect and burn even those scanty fragments of debate,—slips of paper obtained by stealth and in disguise,—those sibylline leaves, which few could gather and still fewer understand.

The debate which perpetuates their hatred to knowledge is very remarkable.

The Speaker informed the House that it was with some concern he saw a practice prevailing, which a little reflected upon their dignity; what he meant was, the inserting an account of their proceedings in the printed newspapers, by which means the proceedings of the House were liable to very great misrepresentations. That he thought it his duty to inform the House of these practices, the rather because he had observed them of late to have run into very great abuses; and therefore he hoped that gentlemen would propose

some method of stopping it. Sir William Yonge immediately proposed a resolution, couched in the imperious language of a manifesto of war by their High Mightinesses, which was carried unanimously, "That it is an high indignity to, and a notorious breach of the privilege of, this House, for any news-writer, in letters or other papers [as minutes, or under any other denomination], or for any printer or publisher of any printed newspaper of any denomination, to presume to insert in the said letters or papers, or to give therein, any account of the debates or other proceedings of this House, or any committee thereof, as well during the recess as the sitting of Parliament: and that this House will proceed with the utmost severity against such offenders."

The whig baronet was in a paroxysm of alarm. "Perhaps some gentlemen may think it, indeed, a hardship not to be able to find their names in print at the head of a great many fine things in the monthly magazines. If you do not either punish the printers, or take some effectual method of checking them, you may soon expect [what a dreadful threat!] to see your votes, your proceedings, and your speeches, printed and hawked about the streets while we are sitting in this House."

A valuable caution against stifling all publication of the debates, even during a recess, was urged by Sir William Wyndham in a tone of liberality and candour which the House, as then constituted, could not reciprocate. "I have seen many speeches of gentlemen in this House that were fairly and accurately taken; and no gentleman, when that is the case, ought to be ashamed that the world should know every word he speaks in this House; for my own

part, I never shall, for I hope never to act or speak in this House anything that I shall be ashamed to own to all the world. That this House has a right to prohibit the publication of any of its proceedings during the time we are sitting, is past all doubt. But I am not at all so clear as to the right we may have of preventing any of our proceedings from being printed during our recess ; at least, Sir, I am pretty sure that people without doors are strongly possessed with that notion, and, therefore, I should be against our inflicting any censure at present for what is past of that kind. The other consideration that weighs very much, Sir, with me upon this occasion is, the prejudice which the public will think they sustain by being deprived of all knowledge of what passes in this House, otherwise than by the printed votes, which are very lame and imperfect for satisfying their curiosity of knowing in what manner their representatives act within doors. They have been long used to be indulged in this, and they may possibly think it a hardship to be deprived of it now. Nay, Sir, I must go farther : I do not know but they may have a right to know somewhat more of the proceedings of this House than what appears upon your votes : and, if I was sure that the sentiments of gentlemen were not misrepresented, I should be against coming to any resolution that could deprive them of a knowledge that is so necessary for their being able to judge of the merits of their representatives within doors."

Mr. Winnington declaimed, with more assent from his hearers, against the indignity involved in "the scandalous practice of printing our proceedings; unless a speedy stop is put to it, what will be the consequence? Why, Sir, you will have every word that is



spoken here by gentlemen misrepresented by fellows who thrust themselves into our gallery. You will have the speeches of this House every day printed, even during your session. And we shall be looked upon as the most contemptible assembly on the face of the earth ! ”

Strange to say, his violence met with the approval of Pulteney, who little knew what delicious draughts of pleasure he lost in refusing to inhale the breath of public fame. The suicidal enemy of his own posthumous renown, he declared his assent to the views of the preceding speech, that “ it is absolutely necessary a stop should be put to the practice which has been so justly complained of. I think no appeals should be made to the public with regard to what is said in this assembly, and to print or publish the speeches of gentlemen in the House, even though they were not misrepresented, looks very like making them accountable without doors for what they say within. Besides, Sir, we know very well that no man can be so guarded in his expressions, as to wish to see every thing he says in this House in print. I remember the time when this House was so jealous, so cautious of doing anything that might look like an appeal to their constituents, that not even the votes were printed without leave. A gentleman every day rose in his place, and desired the Chair to ask leave of the House that their votes for that day might be printed. How this custom came to be dropped, I cannot so well account for, but I think it high time for us to prevent any further encroachment upon our privileges.” The leader of opposition found himself cajoled by the crafty antagonist at his side, who, sipping the sweets of power, cared not for the intoxicating nectar of fame.

Sir Robert Walpole, whilst he admitted his authorship of a history of the last House of Commons of Queen Anne, avowed also, that the author of that history was so apprehensive of the consequences of printing it, that the press was carried to his house, and the copies taken off at night. The pleasure thus stealthily caught was too precious to be repeated.

These threats of parliamentary animadversion compelled the printers in self-defence not to give the faint outline of a speech till four or six months after its delivery, and then travestied in silly, masquerade fashion. Blanks, asterisks, initials, classical titles, set off the disguised orators, but it was the Bœotia rather than the Athens of debate. The same practice was observed with the lists of speakers as with the lists of bankrupts; the printers escaped actions of libel and commitments for slander by giving only the initial and final letters of the name, with a — between. Few reports now seem more wearisome than the debates in the senate of Lilliput, which filled, without gracing, the Gentleman's Magazine, and the small type of the Political Club, where Publicola talked against turnpike gates, and Tullus Aufidius declaimed on the horrors of drinking gin. The sonorous sameness of Dr. Johnson imparted little of a life-like character to harangues, where each rounded his sentences and descanted in Latinized English, with the most provoking but most classical uniformity. Dressed in his senatorial toga, each orator declaimed in a set rotundity of periods, most solemn yet most somnolent, just as if they had been speakers on parade, as if, by some parliamentary regulation, each statesman had risen to address the House in regular House of Commons' uniform, in a tie-wig and Hessian boots.

These formal rank and file orations, paraded on field days, have been well compared to the dialogues in Thucydides, in which the peculiar habits of thought and expression of the historian are discernible, but not those of the supposed speakers. No individual peculiarities may be traced in the diction. The style of Cleon is as pure and terse as that of Pericles. The voice of the prompter is more audible than the actor's, but grave and classical in its declamation.

How great must have been the triumph of Dr. Johnson,—it was probably the proudest moment of his life—when he dropped the mantle of disguise, and stood forth the Roman :—"Alone I did it." At a meeting of literary friends, Dr. Francis remarked, that he had employed eight years of his life in the study of Demosthenes, but that he had met with nothing equal to Pitt's speech in reply to old Horace Walpole, commencing with "The atrocious crime of being a young man." As soon as the warmth of praise subsided, Dr. Johnson opened with these words: "That speech I wrote in a garret in Exeter street.<sup>v</sup> I saved appearances tolerably well, but I took care that the Whig dogs should not have the best of it." The tender conscience of the moralist requited these moments of proud self-congratulation with upbraiding for the deception his oratory had practised. "The Parliamentary Debates,"<sup>x</sup> he said, "were the only part of his writings which gave him any compunction. They were frequently written from very slender materials, and often (sometimes) from none at all—the mere coinage of his own imagination. He never wrote any part of his works with equal velocity."

Notwithstanding the strong disclaimer of the edi-

<sup>v</sup> Croker's Boswell's Johnson.

<sup>x</sup> Life by Dr. Hawkins.

tors of the Parliamentary History,<sup>y</sup> there needs not the unquestioned reputation of Dr. Johnson for veracity to assure us of the truth of this representation. There can be as little doubt that his deep-mouthed dialectics interested the public in the absence of other stimulating topics, and fed their anxiety for a more rapid and genuine publication of the debates. That he might satisfy their curiosity, Woodfall, the enterprising publisher of *Junius*, used to be smuggled into the gallery under the arm of some friendly member, and ensconced himself, with pen and paper in hand, in that vacant place, like a closet, which lay behind the sheltering clock. So much had the interest of the papers increased from their authentic reports, however partial and incomplete, contrasted with the present system, that, when Baldwin was reprimanded on his knees, and made to promise that he would desist from publishing the debates, he stated that it would be the ruin of his paper.

Who can wonder at the pertinacity with which the House reiterated their resolutions against reporting, in number not less than thirty in the Journals, according to the computation of Mr. Charles Wynn, whose accuracy in counting them may be relied upon, when acquainted with the impudence of comment and scurrility which defaced the printed accounts of all proceedings in St. Stephen's Chapel ! One of these libels was complained against, which spoke of Lord Weymouth as "Jeremiah Weymouth, the d——n of this kingdom." Colonel Barré moved "that Jeremiah Weymouth, the d——n of this kingdom, is not a member of this House." He might be a peer, doubtless, and the Upper House would protect the honour of its mem-

<sup>y</sup> Preface to vol. ix.



bers ; but the anger of ministers was natural, and would not have exposed them to derision, had they acted with vigour.

The final conflict with the printers began in 1771, Colonel Onslow promising to bring a couple of printers every day before the House, and was waged with violence. "I had the honour," said the colonel to Speaker Norton, "to be hanged in effigy yesterday on Tower Hill on the same gibbet with yourself, and was represented as penitent before I was turned off, but you remained hardened to the last." The Speaker's warrant was slighted as a piece of waste paper. He had once said unguardedly, in opposition, that he would treat the resolutions of the House with no more respect than he would those of so many drunken porters. The city treated their resolutions against printing with as little deference as their Speaker. The cabinet shrunk from continued hostilities against a free and daring press ; they pusillanimously permitted the obnoxious printers to be wrested in triumph from the hands of the messengers ; their discomfiture was in consequence complete, and the press practically released for ever from parliamentary thralldom. Loud were the Io Pæans of the reporters in 1771, over the defeat of ministers and the humiliation of parliament, and persevering their efforts to pursue their victory to the uttermost. But, unhappily, the execution was most inadequate to the great occasion, and involved the victors in almost equal ignominy with the vanquished.

The license taken by reporters in general, after their signal triumph, and their ineptities in recording the achievements of debate, would seem to have been hazarded in such a spirit of wantonness as to excuse, al-

most to justify, their previous exclusion. The sayings of great men, meant for immortality, are told in this sorry fashion. "Mr. Sheridan now rose, and during the space of five hours and forty minutes, commanded the attention and admiration of the House by an oration of almost unexampled excellence, uniting the most convincing closeness and accuracy of argument with the most luminous precision and perspicuity of language, and alternately giving force and energy to truth by solid and substantial reasoning, and enlightening the most extensive and involved subjects with the purest clearness of logic, and the brightest splendour of rhetoric." One fact at the close of the report outweighs all this confused heap of tawdry superlatives, that, when the speech was ended, the House expressed their approbation by a new and wholly irregular method—by loudly and repeatedly clapping their hands.

Justly might the biographer of Sheridan<sup>z</sup> complain that the reporters of his speeches have introduced tantalizing epithets, as witty, sublime, &c., but have, with an art near akin to that of reducing diamonds to charcoal, contrived to turn all the brilliancy of his wit into dull and opaque verbiage. "The spiritless abstract of Sheridan's speech," says Mr. Moore on another occasion, "stands like one of those half-clothed mummies in the Sicilian vaults, with here and there a fragment of rhetorical drapery, to give an appearance of life to its marrowless frame. The attempts to give the terseness of his wit particularly fail, and are a strong illustration of his own saying to a nobleman, 'Pray don't tell that anecdote; a joke in your mouth is no laughing matter!'"

<sup>z</sup> Moore's Life of Sheridan.

The great cotemporaries and rivals of the wit fared no better at the hands of their ruthless tormentors. "Mr. Fox," we read, "was wonderfully pleasant on Lord Clive joining administration." "Mr. Burke turned, twisted, metamorphosed, and represented every thing which the right honourable gentleman (Pitt) had said, advanced into so many ridiculous forms, that the House was kept in a continued roar of laughter." Again, "Burke enforced these beautiful and affecting statements by a variety of splendid and affecting passages from some of the Latin classics." "How very unlucky," writes Burke to Dr. Lawrence, "that the reputation of a speaker in the House of Commons depends far less on what he says there, than on the account of it in the newspaper." Lawrence replies, "You saw nothing but the mere bones, stripped even of the periosteum, and not even strung regularly together into a tolerable skeleton."

The Mark Supples of the reporters' gallery, who cried out with stentorian lungs during the pause of a heavy speech, "A song from Mr. Speaker," indulged their fancy or caprice in reporting some speeches so waggishly as to make the orator appear ridiculous, and totally suppressing others. Mr. Wilberforce read an extract from a newspaper, in which he was represented, in recommending the cultivation of potatoes, thus to have expressed himself. "Potatoes make men healthy, vigorous, and active; but what is still more in their favour, they make men tall; more especially was he led to say so, as being rather under the common size, and he must lament that his guardians had not fostered him under that genial vegetable!" The passage was gravely read, of course amid peals of

unextinguishable laughter, and Mr. Wilberforce appealed to the House whether the representative of a populous county ought not to be protected against such misstatements. He wisely abstained from moving to bring the reporter to the bar, as the invented nonsense savoured strongly of the inspiration of poteen.

A complaint of misrepresentation by Mr. Martin of Galway appears to have been based on a less solid foundation. The reporter having dashed his pen under some startling passages—short-hand notes of what had fallen from the lips of the Hibernian orator—the printer of the paper was called to the bar. In self-vindication he offered to prove the report to have been the *ipsissima verba*, a literal transcript of what was spoken, but was silenced by the most unanswerable question ever put by man. “That may be,” said Mr. Martin, “but did *I spake them in italics?*”

So completely had the relative positions of the parties become inverted, that, instead of being proscribed, the reporters became proscribers. In consequence of some insulting remarks which fell from Mr. Windham, unworthy of his gentlemanly but paradoxical genius, upon the occupants of the strangers' gallery, whom he classified in a moment of spleen with broken-down tradesmen and discarded footmen; the gentlemen of the press, considering themselves personally insulted, came to a formal agreement that the speeches of their traducer should no longer be reported, and for about three months systematically closed their note-books when Windham or Tierney, who had also exposed himself to their ban, rose to speak. They could not have devised a more ingenious scheme of revenge; for Windham participated



in Burke's noble anxiety for a correct transmission of his eloquence to posterity. Of his bitter and perhaps most effective speech, on the expedition to Walcheren, where he said, "the army was extinguished in the marshes like a candle in a vault," and where he wittily compared the slaughter of ministers by opposition, to the sport of duck-shooting on a lake, "We knock them down easily enough, *but cannot get them out*—" of a speech so full and brimming over with eloquence and humour, the reporters merely say, "Mr. Windham spoke at length in favour of the original resolutions !"

Most unwisely in his Quixotic search for paradoxes had Mr. Windham thrown down the gauntlet, and most heavily had he been flung by Sheridan, who pricked forth as the champion of the press, and dealt his blows with a vigour that left his antagonist prostrate. "If," said the splenetic member for Norfolk, "this practice had been tolerated, winked at, and suffered, it was no reason that it should on all occasions be continued, and that persons should make a trade of what they obtained from the galleries, among which persons were to be found men of all descriptions—bankrupts, lottery-office keepers, footmen, and decayed tradesmen. What was the value to their constituents of knowing what was passing in that House! Supposing they should never know, it was only the difference between a representative government and a democracy. He could see no reason why the standing order should now be laid prostrate at the feet of the very worshipful, but he would not say very ancient, corporation of London printers. These gentry had their favourites, and marred and sup-

pressed at pleasure. The grand jury of the country, which was a common inquest, never admitted strangers to be present."

"Give me," said Sheridan in reply, "but the liberties of the press, and I will give to the minister a venal House of Peers—I will give him a corrupt and servile House of Commons—I will give him the full swing of the patronage of office—I will give him the whole host of ministerial influence—I will give him all the power that place can confer upon him to purchase up submission and overawe resistance—and yet, armed with the liberties of the press, I will go forth to meet him undismayed; I will attack the mighty fabric he has reared with that mightier engine; I will shake down from its height corruption, and bury it beneath the ruins of the abuses it was meant to shelter."

The triumph of Sheridan was complete. Since then the gallery in which the reporters sit has become a fourth estate of the realm. The publication of the debates, a practice which seemed to the liberal statesmen of the old school full of danger to the great safeguards of public liberty, is now regarded by many statesmen as a safeguard tantamount, and more than tantamount, to all the rest together. "If the Commons were to suffer the Lords to amend money-bills, we do not believe<sup>a</sup> the people would care one straw about the matter. If they were to suffer the Lords to originate money-bills, we doubt whether such a surrender of their constitutional rights would excite half so much dissatisfaction as the exclusion of strangers from a single important discussion."

Formerly admission to that gallery was little prized :

<sup>a</sup> Edinburgh Review.

the hardy intruder who ventured thither was liable to be ejected as an intruder, or taken into custody as a Papist. Even so late as the year 1740, the presence of a stranger in the gallery was considered as a crime. One Cooley, having handed a paper to different members, entitled, "Considerations upon the Embargo," was brought to the bar; and Mr. Archer, a member, desired that he might be asked, "Whether, on the Friday before, he was not in the gallery?" The question was objected to, on the principle that it would ensnare the party to criminate himself, and occasioned a debate as protracted as it was curious. Mr. Sandys remarked, "that the punishment to which intruders are subject by the orders of this House proves that their presence in this House is considered as a crime, of which, as we have no proof of it, a confession ought not to be extorted by an artful and insidious question, of which he may not discover the intention or the consequence."

Mr. Winnington thought that the principle did not apply, and desired the clerk to read the order for taking strangers into custody. "It is evident, sir, that by the order now read, the serjeant-at-arms attending in this House may take into custody all strangers that shall be found in the House or gallery while we are assembled; and that this order is not always put in practice must be attributed to the lenity of the House. But that the order extends to past offences, and subjects any man to imprisonment for having been present in some former day, cannot be conceived; for how far may such a retrospect be extended? Or, at what time, after having intruded into the House, can any man presume to consider himself as exempt from the danger of imprisonment?"

This interpretation was, however, denied by Mr. Pulteney. "I cannot but conceive that our order may extend its influence beyond the present moment ; and that intrusions may be punished by the House on another day than that on which they were committed." Sir William Yonge advised the gentlemen in the gallery to retire, indeed, but not to hide themselves, like felons, or men proscribed by proclamation. The question was waived by Sir Robert Walpole deeming it superfluous, as Cooley had already confessed himself author of the libel, and he was accordingly committed to Newgate.

In April, 1777, Mr. Temple Luttrell formally moved, that the standing order, prohibiting the presence of strangers at the debates, should be taken into consideration in a committee of the whole House. After enforcing the repeal of the order, upon general principles of expediency and constitutional right, he suggested, as an experiment which might at least be tried for the remainder of the session, that any member should be permitted to introduce, on each day of public business, before four o'clock, the hour at which private business usually ended, one person into the gallery below the bar, on delivering, at the Speaker's table, the name in writing of the person so introduced, and thereunto subjoining his own name as responsible for such introduction. Mr. Luttrell said, "He had been at the pains of measuring the seats ; and if they would assign to strangers the entire gallery below the bar, there would yet be found near 800 feet of cushion for the easy accommodation of the members : allowing twenty inches for each member, this space would accommodate as full a House as ever assembled. When Sir John Cust," he said,



“was Speaker (1761—1770), and during the great length of time that Mr. Onslow presided (1727—1761), strangers used to be admitted even into the body of the House: while Lord Chatham was pouring forth his wonderful eloquence, they had been suffered to advance as far as beneath the rose, in the centre of the roof.”

Mr. T. Townshend said, that he had been a member of the House during three Parliaments, and he had never known the orders for the exclusion of strangers rigorously put in force, till the present Speaker was in the chair. He wished them to follow the example of the other House, which has opened their door to strangers; “but yet,” he added, “he had a kind of plebeian austerity about him, which could ill brook their ungracious way of doing it with regard to the Commons.”

The motion was opposed by Lord North, and supported by Mr. Fox; after which Mr. Rigby, from his seat on the opposition benches, delivered a very characteristic oration. “He thought it improper,” he said, “to let in strangers; they had no business in the House at all; and he had observed that when they are thus indulged, scarce a day passes without some of the members being put to much inconvenience, and frequently they have been pushed about and insulted. He always had voted against admitting strangers, and would continue so to do. Even when it was a custom to let in strangers, under certain restrictions, he had never brought in anybody, and never would, even should the like indulgence again take place. Some gentlemen were for letting in the eldest sons of members; he had no eldest son; many other gentlemen, as well as himself, were

so unhappy as to have no eldest son, were they, therefore, with propriety to be deprived of the benefit of such indulgence, if they chose to have their share of it? . . . . What good could result from strangers being in the gallery? Only to print speeches in newspapers of all sorts! He argued that the Commons had little reason to be pleased with the style and terms of their admission into the House of Peers: a line was drawn between Commoners who were allied to the Peerage, and all others of inferior dignity. Lords' brothers and Lords' cousins might be accommodated behind the throne, but the rest of that House must be contented to stand below the bar, with an intolerable crowd of other persons, and with a risk of having their pockets picked." The motion was negatived, on a division, by a majority of 83 to 16.

It should seem, however, that, after this debate, the standing order was not so strictly enforced as it had been for some time previously. When, two sessions afterwards, Colonel Luttrell determined, in consequence of some misrepresentation of one of his speeches in a morning paper, to move that the order for the exclusion of strangers should in future be carried strictly into execution, Mr. Fox observed, "That the true and only method of preventing misrepresentation was by throwing open the gallery, and making the debates and decisions of the House as public as possible. There was less danger of misrepresentation in a full company than a thin one, as there would be a greater number of persons to give evidence against the misrepresentation. The shutting of the gallery could not prevent the proceedings of the House from finding their way to public view; for, during a certain period, when the gallery was kept empty, the debates

were printed, let the manner of obtaining them be what it might ; and, in fact, the public had a right to know what passed in Parliament." The Speaker said, "that the conversation did not a little affect him, for there was a standing order to keep the gallery shut against strangers ; and he had, with the acquiescence of the House, relaxed it. He should, therefore, as the affair happened to be mentioned, be glad that before the House rose they would come to some determination."

Nothing appears to have been done. The expediency of relaxing the standing order was strongly maintained by Mr. Burke, General Conway, and other members ; and in the end, Colonel Luttrell rose and said that Mr. Burke's arguments had so much shaken his opinion, that he was now convinced it would be improper to carry the order to its rigour, and he therefore should not make his intended motion. Mr. Burke warmly advocated the opening of the gallery as a source of information and amusement to the ladies, which ought not to be done away and sported with at pleasure. Only four days afterwards, the ladies were expelled, and a decree of exclusion pronounced against them, which has never since been relaxed.

An interesting debate had been foretold, and strangers attended in great numbers. Many ladies not having been able to obtain seats, it was ordered that the House should be cleared of the men strangers, which was done ; when the ladies entered in such numbers as completely to fill both the galleries and the seats below the bar. At this moment of victory, a member, irritated by the expulsion of some gentlemen for whom he had procured places, insisted

that the House should be cleared of *all* strangers. The enforcement of the standing order was a matter of course. But the officers found their duty of turning out the fair intruders no easy task; a violent and determined resistance was offered to them; and for nearly two hours the House was kept in a state of the most extraordinary ferment and commotion.

Ever since this singular scene, females have been rigorously excluded from the House. The only relaxation of the prohibition was the practice introduced a few years since of admitting a small number of ladies to a place called the Ventilator, above the ceiling, through the apertures in which they heard and saw very well, but most inconveniently. Twenty-five tickets for this apartment were issued every night by the Serjeant-at-Arms. Ladies are also now admitted into the new gallery which has been formed in the House of Lords. They used formerly to place themselves behind the curtains on each side of the throne.

In ancient times they seem to have appeared more openly. In 1675, Lord Shaftesbury is recorded to have complained to the House of "those droves of ladies that attended all causes:" it was even come, he said, "to that pass that men hired or borrowed of their friends handsome sisters, or daughters, to deliver their petitions"

Ladies, who used to venture into the gallery of the Commons, so openly that the Speaker compromised the gravity of the chair, by declaring that he had espied petticoats, were, after that forcible expulsion, content to steal thither in disguise. Wraxall mentions that he has seen the Duchess of Gordon habited as a man, sitting in the strangers' gallery; the beauti-



ful Mrs. Sheridan was attracted to its precincts in similar disguise by the charm of her husband's oratory: the sole justification that could be urged for such an intrusion in masquerade.

The standing order for the exclusion of male strangers was less rigidly enforced, but adhered to or relaxed according to the caprice of any individual member. Thus we read in Curwen,<sup>b</sup> that Lord Surrey, chancing to espy Arnold, the American seceding general, in the House, sent him a message to depart instantly, threatening, in case of a refusal, to move for breaking up the gallery; to which the General answered, that he was introduced by a member, to which Lord Surrey replied, he might under that condition stay, if he would promise never to enter it again, with which General Arnold complied.

At another time, Baldwin, the member for Shropshire, complained that Garrick was admitted when others were excluded. "The whole House," writes Garrick,<sup>c</sup> "groaned at poor Baldwin, who is the dullest man in it, [hence, we may presume, his antipathy to the wit,] and a question was going to be put to give me an exclusive privilege to go in whenever I pleased. In short, I am a much greater man than I thought."

Who that has sat in the gallery of the old House of Commons—that venerable building which the calamitous fire of October 16th, 1834, reduced to ashes—can fail to recollect his first feeling of disappointment, as he gazed with a sense of wounded pride around the dark and narrow room, and looked in astonishment at honourable members grouped in various attitudes of carelessness and indifference! The aspect of the Chapel, plain almost to rudeness,

<sup>b</sup> Curwen's Journal.

<sup>c</sup> Hannah More's Memoirs.

appears to have struck an intelligent French stranger with a feeling akin to pity, or contempt. "La salle," he writes,<sup>d</sup> "est petite et sans decoration—point de marbre—point d'or—point de peintures." Its paltry dimensions, confined space, and want of accommodation could only be adequately described in the vernacular of Cobbett, who possessed the peculiar faculty of disenchanting his readers from all charms of poetry, of vulgarizing the noble, and debasing the sublime. "Why," he asks, with the natural indignation of a new member, "are six hundred and fifty eight of us crammed into a space that allows to us no more than half a foot square? There we are, crammed into this little hole, squeezing one another, treading upon each others' toes, running about to get a seat, going to the hole at seven o'clock in the morning, as I do, to stick a bit of paper with my name on it on a bench, to indicate that I mean to sit there for that day, then routed out of those places again after a division has taken place, and running and scrambling for a seat in just the same manner as people do, when they are let into a dining room at a public dinner at the Crown and Anchor, or elsewhere."

Yet such as it was, "cabin'd and confin'd," undecorated for a century, decked only with a new coating of paint and whitewash, destitute of all architectural pomp, unadorned by a single monument of sculpture or art—into that building what intelligent stranger was ever ushered for the first time without a throbbing heart and heightened pulse! Who but has lowered his voice on first entering that room as he felt the genius of the place compelling awe, the deep inspiration of the past! Mighty memories, sub-

<sup>d</sup> Viscount Chateaubriand.

lime associations, breathe their subduing spells around the stranger. *Tanta vis admonitionis inest in locis.*<sup>e</sup> Within those walls the battles of humanity have been fought, the privileges of freedom vindicated, and the liberties of England won. For not less than ten generations, ever since the gentle Edward VI. allotted that consecrated chamber to the great council of Parliament, the genius and virtue, the dignity and rank, the wisdom and eloquence, of the nation have been there represented. Treasures of statesmanship have been lavishly poured forth in that hall, which there was no prudent hand to gather. There blushed the chivalry of Raleigh, there wept the servile patriotism of Coke, there recorded its protest the faithful loyalty of Hyde. Its floor was once profaned by the hasty step of the unhappy Charles, who left his guards at the door as he faltered into the Speaker's chair—once far more basely desecrated by the stamp of Cromwell, as he crowded the benches of a truckling assembly with the myrmidons of a usurper.

But fearfully was the insult avenged: nobly have those assaults of despotism been requited by the Acts of freedom—the Habeas Corpus Act, the Bill of Rights, and the Act of Settlement—those death-warrants of tyranny which have since been read there as law. There, with an eye glowing fire eloquent as his voice, Chatham spoke for immortality, and, triumphing over physical weakness and bodily decay, made his very crutch an instrument of oratory—there the Great Commoner crushed the house of Bourbon, and smote her power with that electrical shock which reverberated in another hemisphere. On that floor the mighty Burke—great even in his failures—threw down the dagger, a

<sup>e</sup> Cicero de Finibus.

specimen of the presents which French fraternity was preparing for his countrymen. There Castlereagh walked proudly up the House amid loud huzzahs, with the treaty of Peace, signed at Paris, in his hand. There Canning called the new world into existence, that he might redress the balance of the old.

By the table in that Chapel, afterwards stained with Percival's blood, the brow of the boldest warrior has grown pale, as he stood up to receive the thanks of the House, and with trembling voice stammered forth his gratitude. Blake, and Albemarle, and Schomberg, Marlborough, and a greater even than that proud captain, the Hero of a Hundred Fights, the Duke of Wellington, have drunk in there the pealing applause which heralded Westminster Abbey. At that bar the proudest of England's peers have bent the head to deprecate the Commons' vengeance; the governor of millions—the ministers of state—have there bowed the knee, and in their impeachment confessed the grandeur of the great national inquest. There the noblest sons of genius—Bacon, and Newton, and Wren, Addison, Gibbon, Mitford, have sat “mute but not inglorious.” There Oglethorpe taught the lesson of humanity to inspect our prisons, and Meredith and Romilly pleaded, against capital punishments, that criminals still were men. Those walls have rung with the shout of triumph as the slave trade went down in its iniquity. Peals of laughter have awakened the echoes of that chamber to generations of wits—Martin, and Coventry, Charles Townshend, and Sheridan, and Canning. The hollow murmurs of sympathy have there rung back the funeral tribute to the elder and younger Pitt, to Grenville and Horner, to that eloquent orator, con-

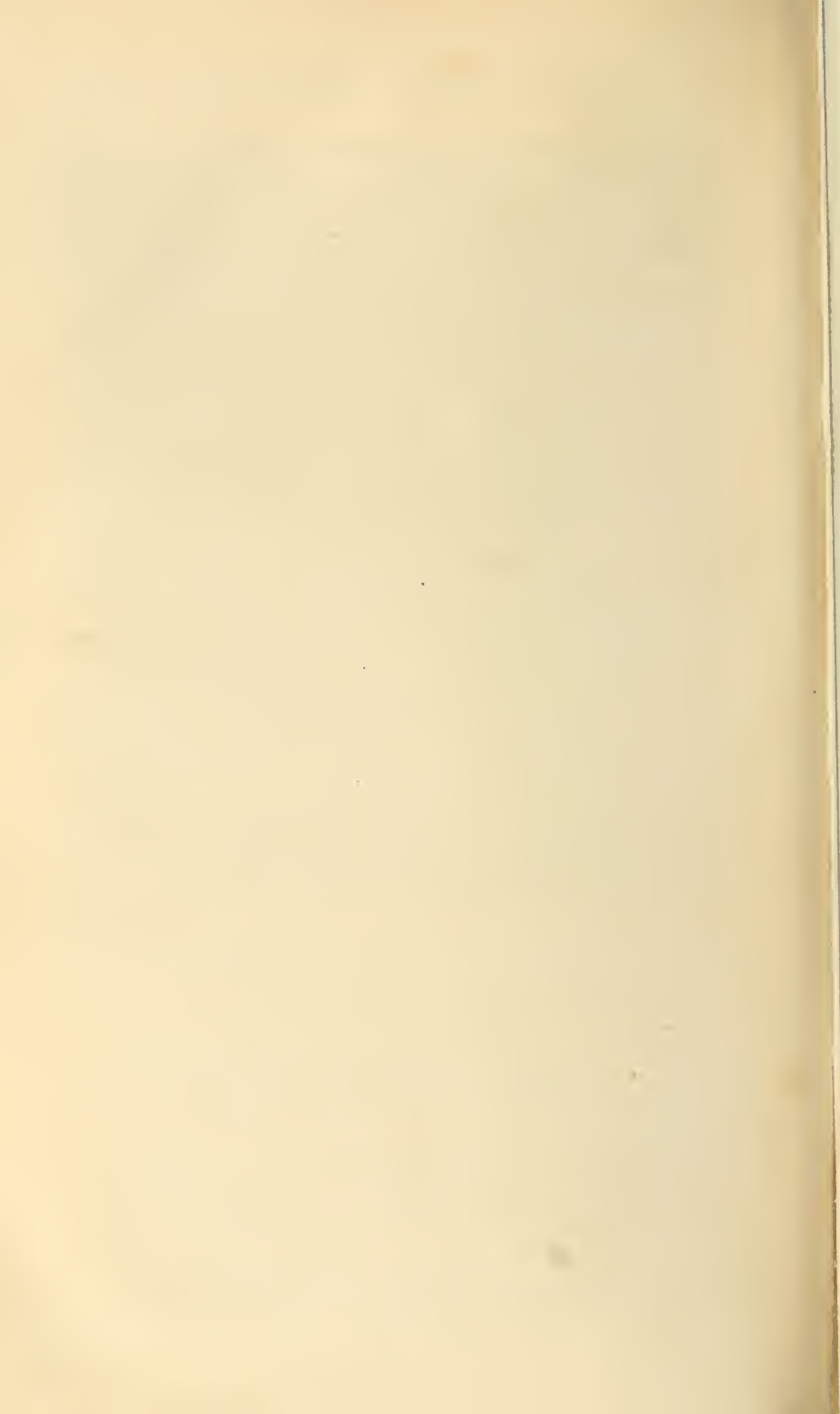


spicuous among his countrymen, Grattan, who in his dying hour there poured forth his soul. What exhilarating cheers, the only rewards to St. John, for those lost orations which have perished for ever, have there rewarded the efforts of Pitt and Fox, as they sunk back exhausted! The forgotten oratory of that chamber would more than balance all that is recorded.

Magnificent as the new building may be, adorned with paintings and embellished with trophies of our progress in the arts, far more convenient than the old chamber, in splendour not to be compared, the palace of senators and not the mere hall—it can never rival, in the mind's eye, that humbler room empannelled with living memories, blazoned with illustrations of the past. The cloud of light, which filled the old temple with the glory of the Presence, far more than transcended the vivid splendours of the new. Though the rising structure cannot be for centuries what St. Stephen's Chapel has been, it will stand, we may rest assured, as the former House, the classical sanctuary of Britain's intellectual greatness, the chosen palladium of her proudest attributes—freedom, and eloquence, and power.

END OF THE SECOND VOLUME.



















AA 000 953 564 2





